

London School of Economics and Political Science

**Leverage and Limitations of the EU's Influence in the Eastern
Neighbourhood**

A Study of Compliance with the EU's Justice and Home Affairs' Standards
in Georgia, Moldova and Ukraine

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Declaration of Authorship

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Abstract

When the European Neighbourhood Policy (ENP) was launched in 2004 expectations of its potential were low because it lacks the ability to offer EU membership as an incentive, which was found to be pivotal for the EU to have influence in the Central and Eastern European Countries (CEECs). Nevertheless, progress reports have demonstrated that some convergence toward the EU standards has taken place in the neighbouring countries. This research seeks to understand under which conditions compliance takes place, what explains the variation in (non)compliance with the EU standards in the area of Justice and Home Affairs (JHA) and what influence does the EU have. It examines formal and behavioural compliance with the EU action plan recommendations in the area of border guard reform, readmission agreement, asylum and refugee protection, and criminalisation of human trafficking in Georgia, Moldova and Ukraine. The three states have all expressed interest in EU membership, but they vary in their potential to be considered as candidates and in their identification with the EU. Rather than assuming that the EU's influence is low in the neighbourhood because it cannot offer a certain membership incentive, this research studies the problem by focusing on a combination of explanatory factors drawn from rational choice and sociological/constructivist institutionalism both at the macro level (strength of membership prospect and identification with the EU) and at the issue-specific levels. The research demonstrates that the EU's influence is differential and dependent on domestic, external and issue-specific conditions. The results indicate that the EU is capable of eliciting influence in the JHA area without a certain EU membership prospect. However, when the country perceives that there is a possibility to accede to the EU, compliance with the EU standards has been more even across the four issue areas and at the formal and behavioural levels.

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Table of Contents

Declaration of Authorship	1
Abstract	2
Acknowledgements	3
Table of Contents	4
Tables	6
Figures	7
Abbreviations	8
1. Introduction	11
1.1 Setting the Context: the EU and its Neighbourhood.....	11
1.1 The European Neighbourhood Policy	13
1.2 Externalisation of the Justice and Home Affairs sector into the Neighbourhood	15
1.3 Research Scope and Argument	15
1.4 Structure of the Thesis	16
2. From Theoretical Framework towards Analytical Framework: New Institutionalism, Europeanisation and External Governance	18
2.1 Introduction.....	18
2.2 New Institutional Rational Choice and Sociological Institutionalism	19
2.3 Europeanisation in the CEECs	19
2.4 The EU's Leverage in the Neighbourhood	21
2.5 Summary of the Main Findings and Gaps in the Previous Research.....	25
2.6 Analytical Framework and Hypotheses for Studying the EU's Influence in the Neighbourhood	26
2.7 Conclusion	31
3. Research Design: Cases, Methods and Data	33
3.1 Introduction.....	33
3.2 Case Selection.....	33
3.3 Methods and Measurement	36
3.4 Operationalisation and Measurement of Macro-Level Variables	42
3.5 Operationalisation and Measurement of Micro-Level Variables.....	47
3.6 Data and Sources.....	51

4. Strength of Membership Prospect and Identification with the EU in Georgia, Moldova and Ukraine	56
4.1 Introduction.....	56
4.2 Strength of the EU Membership Prospect and Identification with the EU in Georgia	57
4.3 Strength of the EU Membership Prospect and Identification with the EU in Moldova....	67
4.4 Strength of the EU Membership Prospect and Identification with the EU in Ukraine	78
4.5 Conclusion	89
5. The EU’s Influence in the Area of JHA in Georgia.....	92
5.1 Introduction	92
5.2 Border Guard Reform	93
5.3 Readmission Agreement	103
5.4 Protection of Asylum Seekers and Refugees	112
5.5 Criminalisation, Prosecution and Punishment of Human Trafficking	121
5.6 Conclusion	128
6. The EU’s Influence in the Area of JHA in Moldova.....	130
6.1 Introduction.....	130
6.2 Border Guard Reform	130
6.3 Readmission Agreement	138
6.4 Protection of Asylum Seekers and Refugees	144
6.5 Criminalisation, Prosecution and Punishment of Human Trafficking	153
6.6 Conclusion	161
7. The EU’s Influence in the Area of JHA in Ukraine	163
7.1 Introduction.....	163
7.2 Border Guard Reform	164
7.3 Readmission Agreement	171
7.4 Protection of Asylum Seekers and Refugees	178
7.5 Criminalisation, Prosecution and Punishment of Human Trafficking	188
7.6 Conclusion	195
8. Conclusion.....	197
8.1 Overview of the Thesis	197
8.2 Summary of Research Findings	198
8.3 The Main Challenges to the EU’s Influence.....	202
8.4 Research Contribution, Limitations and Generalisation	204
8.5 Future Research Avenues on the EU’s Influence	209
Appendix.....	211
References	223

Tables

Table 2.1	Operationalisation of Variables.....	26
Table 3.1	Country Selection.....	33
Table 3.2	Issue Selection.....	34
Table 3.3	Operationalisation of the Levels of Compliance	38
Table 4.1	Membership Prospect.....	91
Table 4.2	Identification with the EU.....	91
Table 5.1	Conditions for (non)Compliance: Border Guard Reform in Georgia	103
Table 5.2	Conditions for (non)Compliance: Readmission Agreement..... in Georgia	111
Table 5.3	Conditions for (non)Compliance: Protection of Asylum Seekers and Refugees in Georgia	120
Table 5.4	Human Trafficking Investigations and Sentences in Georgia.....	126
Table 5.5	Conditions for (non)Compliance: Human Trafficking in Georgia.....	128
Table 6.1	Conditions for (non)Compliance: Border Guard Reform in Moldova	138
Table 6.2	Conditions for (non)Compliance: Readmission Agreement in Moldova	144
Table 6.3	Conditions for (non)Compliance: Protection of Asylum Seekers and Refugees in Moldova	153
Table 6.4	Human Trafficking Convictions and Sentences in Moldova.....	158
Table 6.5	Conditions for (non)Compliance: Human Trafficking in Moldova.....	161
Table 7.1	Conditions for (non)Compliance: Border Guard Reform in Ukraine	171
Table 7.2	Conditions for (non)Compliance: Readmission Agreement..... in Ukraine	178
Table 7.3	Conditions for (non)Compliance: Protection of Asylum Seekers and Refugees in Ukraine	188
Table 7.4	Human Trafficking Convictions and Sentences in Ukraine.....	193
Table 7.5	Conditions for (non)Compliance: Human Trafficking in Ukraine.....	195

Figures

Figure 1	Democracy	214
Figure 2	Rule of Law: Corruption and Independence of Judiciary.....	215
Figure 3	Human Rights.....	215
Figure 4	Economic Freedom	216
Figure 5	Party Opinions - Georgia	216
Figure 6	Party Opinions - Moldova.....	217
Figure 7	Party Opinions - Ukraine.....	218
Figure 8	Perceptions on European Values	219
Figure 9	Identification with the EU	220
Figure 10	Financial Assistance.....	221
Figure 11	Summary of Results.....	222

Abbreviations

BOMMOLUK	Improvement of Border Controls at the Moldovan-Ukrainian State Border
CBMM	Capacity Building in Migration Management
CEECs	Central and Eastern Europe Countries
CEPS	Centre for European Policy Studies
CFSP	Common Foreign and Security Policy
CIRI	The Cingranelli-Richards (CIRI) Human Rights Dataset
CIS	Commonwealth of Independent States
COREPER	Permanent Representatives Committee
CRRC	Caucasus Research Resource Center
DCFTA	Deep and Comprehensive Free Trade Agreement
EaP	Eastern Partnership
EC	European Commission
ECHO	Humanitarian Aid & Civil Protection
ECRE	European Council on Refugees and Exiles
ECT	Energy Charter Treaty
EIDHR	European Instrument for Democracy and Human Rights
EEA	European Economic Area
EEAS	European External Action Service
ENP	European Neighbourhood Policy
ENPI	European Neighbourhood and Partnership Instrument
ERGO	Enhancing Returns to Georgia Operationally
EU	European Union
EUBAM	EU Border Assistance Mission to Moldova and Ukraine
EUMM	European Union Monitoring Mission
EUSR	European Union Special Representative
FRONTEX	European Agency for the Management of External Borders

FSJ	Freedom, Security and Justice
GCRT	Georgian Centre for Rehabilitation of Victims of Torture
GEPLAC	Georgian-European Policy and Legal Advice Center
GOVAC	Building Training and Analytical Capacities on Migration in Moldova and Georgia
GYLA	Georgian Young Lawyers' Association
HUREMAS	Reinforcing the State Border Guard Service of Ukraine Human Resources Management System and Improving Integrated Border Management
IBM	Integrated Border Management
ICG	The International Crisis Group
ICMPD	International Centre for Migration Policy Development
IDPs	Internally Displaced Persons
IFI	International Financial Institutions
ILO	International Labour Organization
IMF	International Monetary Fund
IO	International Organisation
IOM	International Organisation for Migration
IPAP	Individual Partnership Action Plan
IPPR	Institute for Public Policy Research
IRI	International Republican Institute
JHA	Justice and Home Affairs
MFG	Manifesto Group
MIA	Ministry of Internal Affairs
MIDPFOTAR	Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia
MoI	Ministry of the Interior
MRA	Ministry of Refugees and Accommodation
NATO	North Atlantic Treaty Organization

NGO	Non-Governmental Organisation
NIP	National Indicative Paper
OECD	Organisation for Economic Cooperation and Development
OSCE	Organisation and Cooperation in Europe
PARP	Planning and Review Process
PCA	Partnership and Cooperation Agreements
PfP	Partnership for Peace
REVIS	Supporting the Implementation of the EC Visa Facilitation and Readmission Agreements in Moldova and Georgia
RRP	Regional Protection Programme
RSD	Refugee Status Determination
SCIBM	South Caucasus Integrated Border Management
SIREADA	Implementation of EC Readmission Agreements
SSR	Security Sector Reform
TACIS	Technical Aid to the Commonwealth of Independent States
TAG	Technical Assistance Georgia
TAIEX	Technical Assistance and Information Exchange
TIP	Trafficking in Persons
UN	United Nations
UNAG	United Nations Association of Georgia
UNDP	United Nations Development Programme
UNHCR	UN Refugee Agency
USAID	United States Agency for International Development

The goal of accession is certainly the most powerful stimulus for reform we can think of. But why should a less ambitious goal not have some effect?
(Prodi 2002)

1. Introduction

1.1 Setting the Context: the EU and its Neighbourhood

After the collapse of communism, whilst many Central and Eastern European countries (CEECs) had already taken a path to transition, Georgia and Moldova were struggling with secessionist conflicts and Ukraine was coming to terms with being a state with its own rights as territorial questions remained unsolved with Russia until 1998 and as economic collapse aggravated reluctance to pursue reform (Magocsi 1996; Bremmer 2006). Despite the struggle for stability, since the mid-1990s, the three countries have expressed their interest in being considered as potential candidates for EU membership and declared the wish of returning to Europe which they considered to be their ideological and cultural home. Nevertheless, little attention was given for their bids by the EU and throughout the 1990s the relationship remained limited within the framework of the Partnership and Cooperation Agreements (PCA). Indeed, it was only in 2000 when the EU finally started to pay increasing attention to the three states. This was related to the realisation of the potential consequences of the enlargement that was set to take place in 2004. It increased concern over the soft security threats that the EU recognised in the neighbourhood and which it expected would become more relevant for the EU due to the enlargement. Following this realisation, the EU launched the European Neighbourhood Policy (ENP) to address ‘dividing lines’ between the neighbourhood and the new member states and promised to share ‘everything but institutions’ with the neighbourhood (Prodi 2002). The three states, which expected to be considered as potential candidates, however, saw the ENP as a sign that membership was less likely for them and felt that they were considered as the new buffer zone for the EU instead.

In this setting, where the EU was aiming to increase its own security while addressing the neighbourhood's soft security threats, the Justice and Home Affairs (JHA) issues became one of the priorities of the ENP (Occipinti 2007; Wichmann 2007).

This research aims to understand what influence the EU has in its Eastern neighbourhood in the area of JHA in Georgia, Moldova and Ukraine. More specifically it seeks to answer: under what conditions does compliance with the EU demands take place? What explains variance in (non)compliance with the EU action plan recommendations?

The empirical goal is to establish the EU's potential influence in the neighbourhood when EU enlargement is coming closer to its limits and when the ENP may be the only policy framework for cooperation through which the EU can have influence in the neighbourhood.

This research theoretically builds on the research understanding the EU's domestic influence on non-member states and thus engages in debates of Europeanisation and external governance. It draws on new institutionalist approaches to explain what influence the EU has in the eastern neighbourhood.

It aims to provide answers on the sources of EU leverage and limitations to influence the EU neighbourhood. After the launch of the ENP the EU's potential influence remained scarcely researched due to its recent nature and also as it was approached from the point of view that without the EU's membership incentive it would not be likely to have influence. Even if the external governance literature in the last few years has started producing empirical findings, it has focused mainly on understanding the EU influence focusing on the sectoral level and has not considered the potential influence of the macro-level factors across target states. This research argues that understanding the EU's potential influence through its neighbourhood policy frameworks could however benefit from drawing on both macro and issue-specific level factors as some countries still may be eligible for EU membership. This, albeit vague, possibility to join the EU, may impact their calculation of whether or not to comply. Moreover, some countries which identify with the EU may be more prone to comply with the EU standards in absence of strong material incentives.

Sufficient time has now elapsed from the initiation of the action plans, upgrading the EU policy toward the Eastern neighbourhood through the introduction of the Eastern

Partnership (EaP) and moving onto discussions about Association Agreements in order to draw conclusions on the EU's influence not only at a formal level but also for seeing whether the adopted laws have been acted out.

The rest of this chapter will briefly introduce the ENP and its origins and tools, and the JHA area which the research focuses on before stating the main arguments and findings of the research and the structure for the rest of the thesis.

1.1 The European Neighbourhood Policy

The European Neighbourhood Policy was initiated to create a 'ring of friends' between the EU members and the new EU neighbours and thus to reduce the potential consequences of the 2004 enlargement. It builds on the previous cooperation structures of the countries in the east and the south on the basis of mutual commitment to common values (democracy and human rights, rule of law, good governance, market economy principles and sustainable development) (European Commission 2004). In the Mediterranean it builds on the cooperation structure of Euro-Mediterranean partnership which has been in force since 1995 but has largely failed in delivering expected changes (Del Sarto and Schumacher 2005). In the eastern neighbourhood it strengthens the relations that had previously been covered by the PCA.

Within its communication and strategic papers, three values are the main objectives of the partnership: security, prosperity and stability. The action plans, which are negotiated between the partner states and the EU, became responsible for furthering these objectives within the ENP. The eastern members of Ukraine and Moldova have been implementing them since 2005 and Georgia since 2006. Each of the action plans contains priorities based on the assessment of the country's key concerns and has both long and short-term objectives. The target countries pursue these priorities during a 3-5 year timeline. The priorities of the ENP in the action plans have a common structure including issues relating to political dialogue and reform, economic and social cooperation and development, trade-related issues, and market and regulatory reform, and in cooperation with the JHA issues. In addition, it outlines cooperation in sectors such as transport, energy, research and development and emphasises also a focus on a human dimension (such as people-to-people contacts, civil society, public health) (European Commission 2004).

While the ENP does not deny the potential for membership it does not offer it. The EU is aiming to promote its standards through a variety of other tools. These tools can be divided into those associated with conditionality, with normative pressure and capacity building tools and thus they resemble the tools that were in use also during the Eastern enlargement. The EU uses in its neighbourhood a variety of incentives related to economic, security and societal levels to elicit compliance with its conditional demands. At the economic level it offers an extension of the internal market, preferential trading relations and market opening. It also supports integration into the global trading system. As the most sizeable incentive the ENP has declared ‘a stake in the EU internal market’ (Ferrero-Waldner 2006a), while EaP has offered the opportunity for a Deep and Comprehensive Free Trade Agreement (DCFTA). At the security level incentives are possibilities for lawful migration and movement of persons, intensified cooperation to prevent and combat common security threats, greater EU involvement in conflict prevention and crisis management and greater efforts to promote human rights (Canciani 2007). Since the EaP, the EU also introduced an incentive with a long term perspective for visa liberalisation for the EaP countries. For overall societal development the EU offers further cooperation opportunities in the area of cultural cooperation, integration into transport, energy and telecommunications networks and the European research area.¹

Besides conditional incentives the EU can use normative pressure, capacity building and financial aid. Tools associated with normative pressure are official statements and declarations describing the desired direction of policy, missions in the field/ad hoc visits, legal expert teams (Canciani 2007). The EU aims to build capacity and knowledge through allowing participation in its own programmes and institutions such as TAIEX, Twinning and FRONTEX, and Europol since the initiation of the ENP. Within the economic tools, the European Neighbourhood and Partnership Instrument (ENPI) has been focusing on the financial support within the ENP since 2007. It has taken over the previous funding of Meda and Tacis and has a budget of €11.2 billion from 2007-2013 (Canciani 2007).

¹ See Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbour, Communication from the Commission to the Council and the European Parliament, 11.03.2003, pp. 9-15.

1.2 Externalisation of the Justice and Home Affairs sector into the Neighbourhood

When JHA was formalised as a part of the Treaty of Maastricht in 1992, it was primarily concerned with the EU's internal security and keeping the threatening factors away from its borders. Since the late 1990s there has been an increasing interest by the EU and the member states to cooperate with non-EU countries on security related issues and the JHA issues started to become externalised already in 1998 when in the Vienna action programme EU governments outlined a goal to increase the EU's influence in international cooperation in regard to internal security matters (Zhyznomirska 2011). When the Tampere Programme officially introduced for the first time the external dimension of Freedom Security and Justice (FSJ) it aimed to incorporate the FSJ issues into the Union's external policy (European Council 2000:5; Zhyznomirska 2011). The aim of the ENP was simultaneously to 'soften' but secure the borders between the EU and the new neighbours and not surprisingly, the JHA issues became one of the priority areas under the ENP.

Already prior to the ENP the JHA issues featured for the first time in regard to the neighbourhood in the JHA action plan which was created for Ukraine in 2001. In regard to Moldova and Georgia the JHA priorities were formed as a part the of their ENP action plans. In all of the action plans however the same priorities exist covering sections of migration (legal, illegal, readmission, asylum, visa), border management, the fight against organised crime (including human trafficking), drugs, money laundering and economic crime and police and judicial cooperation.

While most of the ENP action plan priorities related to the JHA section include provisions for enhancing the EU's security by enhancing border control and controlling illegal immigration, the action plans also address the human aspect of organised crime and irregular migration. For instance, the readmission agreement section aims for a facilitation of readmission but also calls for enhancement of the reintegration of own nationals or improving detention centres and while human trafficking is primarily treated as an organised crime at the border, the action plan also encourages the governments to address victims and establish programmes to prevent trafficking.

1.3 Research Scope and Argument

Having defined the origins and purpose of the ENP and JHA, which form the core of this research, this section defines the scope of the research and the main thesis

argument. This research seeks to understand the EU's influence in the Eastern neighbourhood and focuses on the three most likely cases: Georgia, Moldova and Ukraine in four areas of the JHA standards from 2000 until the end of 2011. It employs a framework for study which provides for variation in the explanatory factors. In this way it aims not to overestimate the EU's influence in the cases and to understand the true potential of the EU to promote influence. The focus is on four JHA issues which vary in regard to their level of clarity of incentives and legitimacy as chapter three explains: border guard reform, readmission agreement, asylum and refugee protection, and criminalisation and punishment of human trafficking.

The research results indicate in sum that the EU's influence was differential depending on the country conditions, external setting and issue-specific factors. Whereas the lack of membership did not halt compliance, in cases where it was believed to be a possibility, compliance was more uniform across issues as exemplified in the case of Moldova. Where there were no membership expectations but high levels of identification what mattered was how legitimate the issues were for the country. Georgia was complying with the issues which it perceived as 'the right thing to do' but such compliance did not indicate the EU's direct influence as Georgia was rather following the standards of international organisations which had been present even before the EU and which the EU was also referring to in its action plans. Issues which did not use issue-specific incentives were also indicating that compliance was induced due to international standards rather than to the EU ones.

1.4 Structure of the Thesis

These arguments are developed in the rest of the thesis which is structured in the following way: chapter two discusses previous research and theoretical approaches in studying the EU's influence and through pinpointing the gaps forms hypotheses for the EU's influence in the ENP countries. The third chapter explains the methodology and data sources for the research. Chapters from four to seven form the empirical part of the thesis. Chapter four establishes the level of membership potential by examining the main strengths and weaknesses of the countries in regard to the Copenhagen Criteria and countries' own perceptions on the potential likelihood of EU accession. It then establishes the levels of identification with the EU in Georgia, Moldova and Ukraine. The chapter demonstrates that whereas Georgia identifies most with the EU, its likelihood of eventual membership is least favourable. Moldova since 2009 represents a

country which has the highest likelihood of EU membership potential and which also has had high expectations of it to take place one day. However, it identifies less with the EU and throughout history it has both identified with the EU and Russia. Ukraine saw membership as a potential until 2007 but since then considered it to be lost and therefore has been motivated by the prospect of still having a membership potential only from 2002 until 2007. Ukraine's identification with the EU has varied between the East and the West and while the elite in general has chosen the EU as a 'family' to belong to there is not a shared consensus on it. Having clarified these country specific factors, chapter five focuses on issue-specific questions in four different issue areas within the JHA sector in Georgia, traces back the reasons for (non)compliance and draws back both to macro and issue specific reasons in establishing the EU's role in each case. Chapter six follows the same structure discussing issues related to Moldova and chapter seven discusses the issues related to Ukraine. The final chapter draws conclusions on the conditions under which compliance takes place and establishes the necessary conditions for compliance and for the EU's influence in the neighbourhood. It then discusses the importance of the research in the light of previous research and the findings' implications for future research.

2. From Theoretical Framework towards Analytical Framework: New Institutionalism, Europeanisation and External Governance

2.1 Introduction

The EU's influence in the member states, candidate states and lately in the neighbourhood countries has been captured by the Europeanisation and external governance literature. The Europeanisation literature was mostly developed in the context of the CEECs and has increased significantly since early 2000. More recently literature on 'Europeanisation beyond the EU' and external governance, focusing on the ENP states, has contributed with empirical results and theoretical insights about the EU's potential outside the candidate states. These strands of literature have most often drawn on the rationalist and constructivist approaches of new institutionalism to assess the EU's influence.

This chapter introduces the findings of the Europeanisation literature in the CEECs, its application beyond the EU in evaluating the EU's influence and the findings of the external governance literature. In doing so it identifies factors that were important for the EU to elicit influence and gaps that have not previously been addressed. Drawing on these lessons and gaps this chapter introduces a framework for studying the ENP's influence in the neighbourhood.

The main argument of the chapter is that while Europeanisation research in the CEECs produced important findings about the EU's potential and established that the prospect of the EU membership was necessary in order to have influence in the CEECs, it should not be a starting point for assuming the EU's lack of influence in the ENP states. This was the approach in the early literature interested in the ENP states and consequently little empirical research was then conducted. A further argument that this chapter makes is that while this gap of empirical research on the EU's influence in the ENP states has been increasingly filled in the last few years by focusing more on the sector level issues, the need remains to bridge country related (macro) and issue-specific (micro) variables drawing from both rationalist and constructivist backgrounds in order to understand why there is variance in the levels of compliance with the EU demands in the ENP states and ultimately the EU's potential influence in the neighbourhood.

This chapter introduces first the theoretical framework for studying the EU's influence before drawing hypotheses and introducing the framework for analysis. It starts by

introducing the new institutionalist approaches: rational choice and sociological institutionalism. The second part discusses explanations of the EU's influence in the CEECs and the lessons from applying these to the ENP countries. Then it moves onto the more recent literature which has been engaging in explaining modes of EU external governance and which has started also to analyse the EU's influence in the neighbourhood. Based on these contributions and gaps the last section creates hypotheses for the research that will be operationalised in the following chapter.

2.2 New Institutional Rational Choice and Sociological Institutionalism

Research on the EU's influence in the member states and beyond most often contrasts rational choice and constructivist/sociological approaches. These new institutionalist approaches have their origin in the logic of March and Olsen's (1989) modes of social action: 'logic of consequentialism' and 'logic of appropriateness'. The former, which is in the realm of rational choice, assumes that actors follow the 'logic of consequentialism', which means that the countries choose the most advantageous option from those available (Schimmelfennig 2005). Thus, the main tool for the EU is conditionality according to the rational choice logic (i.e. Grabbe 2003; Schimmelfennig *et al.* 2003; Schimmelfennig and Sedelmeier 2005; Vachudová 2005). The EU can use either positive or negative incentives to influence the target country. The EU's influence by conditionality is based on setting out demands, which the country might adopt if they are gaining more benefits from complying with a demand than they lose out in costs. The EU can also threaten to hold back rewards in cases of non-compliance. The latter, the logic of appropriateness, based on constructivist/sociological institutionalist thinking, assumes that the most appropriate course of action within the circumstances is chosen. Its instruments are the politics of socialisation, which implies arguing and persuading which may result in the internalisation of new norms and values (Schimmelfennig 2005). The approach views that actors conform to prescribed behaviour out of a normative commitment or habit (Schimmelfennig and Sedelmeier 2005:10). Therefore, whether the countries find the EU or its rules legitimate or acceptable carries importance according to this view (Checkel 2000; Kelley 2004; Schimmelfennig and Sedelmeier 2005).

2.3 Europeanisation in the CEECs

The concept of Europeanisation has been at the heart of research describing the EU's influence toward the CEECs since 2000. It has been employed when discussing the

EU's impact in the candidate or member states especially in adherence to the *acquis communautaire* (Radaelli 2000; Börzel and Risse 2000; Kelley 2006; Grabbe 2006; Schimmelfennig *et al.* 2006; Vachudová 2005). Radaelli defines Europeanisation as consisting of a process of:

‘construction, diffusion and institutionalisation of formal and informal rules, procedures, policy paradigms, styles, “ways of doing things” and shared beliefs and norms which are first defined and consolidated in the EU policy process and then incorporated in the logic of domestic (national and sub-national) discourse, identities, political structures and public policies’ (2003: 30).

The term ‘Europeanisation’ has no analytical power, being rather a process than an explanatory framework to describe the process of downloading ‘European Union regulations and institutional structures to a domestic level’ (Howell 2005: 1).

Europeanisation research has identified a large amount of mechanisms to explain EU influence. The frameworks and mechanisms explaining the EU's influence have had different starting points. They emphasise either rationalist or constructivist factors and they focus on variables paying either more attention to the EU conditions, the domestic conditions or a mix of both (Timuş 2007; Sedelmeier 2006, 2011).

The EU based variables for explaining influence have highlighted the EU's strength of conditionality and other control mechanisms in the analysis (Grabbe 2001; Smith, 2003:3; 2005; Tulmets 2005). Some others have also stressed the importance of domestic factors (Schimmelfennig 2005; Vachudová 2005). Lately, a mix of these two sources of variables including domestic and EU related factors drawn both from constructivist and rationalist sources have formed the basis of explanatory frameworks that try to capture the pathways through which Europeanisation takes place. Examples of such frameworks are Schimmelfennig and Sedelmeier's external incentives model, social learning and lesson drawing models (2005), Bauer *et al.* (2007) explaining influence through compliance, competition and communication models or Kubiček explaining democratisation through control, contagion, convergence and conditionality (2003).

The EU related factors in the research, which have especially been emphasised as being important for influence, have been size and credibility of incentives while at the domestic level veto players, resonance, adjustment costs, type of government and party constellations (Vachudová 2005; Schimmelfennig and Sedelmeier 2005), identification,

past legacies and domestic capacity (Barbé *et al.* 2009:835) have been explanatory factors.

While the CEECs research has brought a multitude of frameworks and explanatory factors for explaining the EU's influence in the CEECs, a consensus seems to remain that the EU's most successful strategy was to offer a membership incentive as a condition for meeting its demands.

Other findings in regard to the CEECs were also determining that the rationalist logic best explained influence. Without it, compliance that took place was patchy and selective (Schimmelfennig 2004:220). Moreover, it was also found that political and social incentives were not enough on their own but they also needed to be material and economical (Epstein and Sedelmeier 2008). Overall, conditionality was especially effective when the costs were low and did not threaten the elite's hold on power (Lavenex 2004; Lavenex and Schimmelfennig 2006; Lang, 2007; Lavenex *et al.* 2008).

In comparison, socialisation techniques were only influential in very limited cases, giving a direction for the process or support if it was already ongoing (Kelley 2004; Schimmelfennig *et al.* 2006; Vachudová 2005). This was, however, only in the countries that were considered more liberal (Schimmelfennig 2010). In later stages socialisation was beneficial together with membership incentive as it helped convergence even when costs were high (Schimmelfennig and Sedelmeier 2005). In cases where costs were low socialising power or persuasion were marginally successful in the CEECs (Kelley 2004; Schimmelfennig 2005).

2.4 The EU's Leverage in the Neighbourhood

The EU's leverage in the neighbourhood has recently been discussed both in literature on Europeanisation beyond the EU and external governance (Börzel and Risse 2004; Lavenex 2004; Lavenex and Schimmelfennig 2006; Bretherton and Vogler 2006). Whereas research under these concepts have been focusing on the ENP firstly as a tool for the EU's aim to externalise its governance and to understand how it does so (Tulmets 2006; Meloni 2006), recently there has been an increasing interest in understanding through empirical research its effectiveness and thus the EU's leverage to influence the ENP states.

Soon after the ENP launch in 2004, literature on the ENP started emerging firstly focusing on the ENP as a phenomenon and discussing the role the EU has in governance

and where does it fit in terms of the EU's civilian normative role (Meloni 2006). Moreover, it was focusing on its purpose as a policy offering an enlargement substitute, the EU's way to reinforce Euro-Mediterranean cooperation or pre-enlargement strategy and expand those foreign policy competencies that it had gained during enlargement (Weber and Smith 2007:42). It was also seen as a way to allow the EU to maintain credibility and appeal without continuing enlargement or at least to buy more time for the EU in deciding where to draw its new borders (Missiroli 2004). In addition, the early literature was also discussing the ENP in terms of its tools and made reference to similarities with enlargement (Tulmets 2006; Meloni 2007; Kelley 2006; Delcour 2007). Similarities were found in terms of commitment to shared values, use of conditionality, participation through TAIEX and Twinning tools and monitoring tools.

While similarities were noticed to the enlargement strategy, the lack of the offer of membership as a reward for compliance, its vagueness and one-fits-all nature are perceived as the main restrictions to the ENP's potential. Even with the main incentive that the ENP is offering, the 'stake at a market', there is no descriptive information about it or any timeline for it (Wolczuk and Wolczuk 2004). Iwona Piorko criticised the ENP for failing to differentiate between partners in terms of their diverging ambitions towards the Union (Piorko 2005). For instance, Ukraine has felt that it does not have any better chance of EU membership than Morocco under the current framework (Piorko 2005).

Consequently, while interest in the EU's influence was emerging, the logical step for assuming its influence started the analysis from the point of view that the missing membership incentive in the ENP approach meant that there is little influence expected in the states under the ENP policy. Thus, in the immediate years after 2004, only a little empirical research was aimed at understanding the EU's potential as a consequence of this approach (see Kelley 2006; Lavenex 2008: 938; Schimmelfennig and Scholtz 2008; Smith 2005; Wolczuk 2007: 36).

More recently empirical research on the EU's neighbourhood has started emerging. Europeanisation beyond the EU and external governance started appearing as the main approaches for assessing the EU's influence beyond the EU.

2.4.1 Europeanisation beyond the EU

The concept of Europeanisation beyond the EU was originally challenged on whether it is even possible to talk about Europeanisation if it is not related to EU member or candidate states (Schimmelfennig 2009). Despite the uncertainty of the concept's adaptability beyond the EU, it has been utilised when countries' convergence towards EU standards have been in focus in Eastern Europe (i.e. Popescu 2005; Wolczuk 2006), in the Mediterranean (i.e. Escribano 2006; Bicchi 2006) or in the Caucasus (i.e. Coppieters 2004; Emerson and Noucheva 2004) and in Switzerland, Norway and Iceland (i.e. Fischer, Nicolet and Sciarini 2002, Lavenex and Uçarer 2004).

These pieces of research drew on the analytical frameworks of rationalist/constructivist approaches like the previous Europeanisation literature in the CEECs. In the case of the EaP states the research that related to Europeanisation covered a variety of policy areas in mostly single case studies. For instance, in regard to Georgia, Europeanisation research has focused on energy (Börzel 2010), in Moldova on conflict resolution (Popescu 2005) and democratisation (Timuş 2007); in Ukraine on issues of energy (Börzel 2010), and on democratisation (Wolczuk 2007; Yaroshenko 2007). Europeanisation studies in Eastern Europe have covered quite many policy areas, however, the most covered has without doubt been democratisation (Emerson 2006; Meloni 2006; Timuş 2007; Vachudová 2006; Wolczuk 2009). A limited number of comparative cross-issue and country studies have also emerged. Melnykovska and Schweickert comparing Moldova, Ukraine and Georgia in the area of energy and JHA issues; Wunderlich (2010) focusing on migration policy in Morocco and Ukraine; EU external energy policy and Hofer (2008) comparing EU rule export in Bulgaria, Serbia and Ukraine (Schimmelfennig 2009).

Despite the increasing number of studies being conducted within the Europeanisation beyond the EU framework, the results so far have still been rather preliminary. However, they have been pointing out the importance of the fact that in the ENP states the EU has to rely on socialisation techniques (Emerson and Jones 2005; Sasse 2008) as well as networks (Lavenex 2004, 2008) to exercise influence due to missing membership potential in the EU. In addition, it was expected that compliance levels are dependent on issue and country specific cost-benefit calculations in areas where the EU applies issue-specific conditionality (Epstein and Sedelmeier 2009).

2.4.2 EU External Governance

Whereas Europeanisation is understood as the domestic impact of European governance (Schimmelfennig 2010), EU external governance is then describing ‘dynamics which spur the extension of parts of the Union’s *acquis communautaire* beyond the circle of member states’ (Lavenex 2004: 681). Even if in the last few years EU external governance has explained what modes the EU has to elicit influence outside its borders, just recently literature under external governance has also started to examine the impact and success of the EU’s external governance in the neighbourhood.

The external governance approach, analysing reasons for compliance, gained exposure in a special issue of the *Journal of Public Policy* in 2009 (16:6) where it introduced the main modes of governance. The framework that was suggested by Lavenex and Schimmelfennig (2009) introduced a model of governance which includes institutional forms: hierarchy, network and market.

Hierarchical governance refers to a formalised relationship where it is established through legislation. The relationship between the two parties is one of the rulers and the ruled. In the ENP context, which is based on informal relations, hierarchical governance is also in existence as in the ENP there are also rules, formal procedures and monitoring and the EU uses conditionality and therefore has hierarchal elements (Lavenex *et al.* 2009). Lavenex and Schimmelfennig pointed out that other actors refer to these formalised rules as ‘compulsory impact’ (Diez *et al.* 2006: 572–3) or ‘compliance’ (Bauer *et al.*, 2007). It is also possible to point out the similarity to the external incentives model in a way that is based on conditionality and the top-down role in the study by Schimmelfennig and Sedelmeier (2005).

Network governance is based on mutual relationships between the two parties through voluntary cooperation. Lavenex and Schimmelfennig identify network elements also in the ENP’s macro institutional structure, referring to the fact that action plans were jointly drafted and there are also ENP subcommittees created which make sectoral expert participation available in EU agencies and programmes (Lavenex and Schimmelfennig 2009; Lavenex 2009). At the sectoral level Lavenex identifies network governance as being most fruitful for exporting EU governance. For instance, sectoral network governance covers cooperation networks and programmes such as Twinning and TAIEX. Network governance tools are recognised as working in a context which

Schimmelfennig and Sedelmeier 2005 defined as social learning or as communication in Bauer *et al* (2007).

The last mode of governance is the market which means an outcome is the result of competition. It takes place between formally autonomous actors rather than as the result of hierarchical harmonisation or networked co-ordination. In the third countries this mode is comparable to the EU's influence in the lesson learning situation described by Schimmelfennig and Sedelmeier where the states' interdependence as well as the EU's presence drives them toward policy transposition (2005).

This framework was applied to various studies and the conclusions concerning the EU's influence outside its borders points to the EU's influence being differential according to policy areas and not related to the macro institutional structures (ENP, EEA, bilateral treaties) (Lavenex *et al.* 2009). A recent empirical study in the external governance literature additionally has suggested that sector conditions such as codification and adoption costs matter more than country's domestic EU aspirations, geographic region or degree of country's liberalisation in the democratic governance promotion (Freyburg *et al.* 2011).

2.5 Summary of the Main Findings and Gaps in the Previous Research

While the previous Europeanisation literature was dominated by expectations that variance is dependent on the EU's capability to offer a credible EU membership incentive due to the previous success of the membership incentive in the CEECs, the external governance aspect suggested the importance of focusing on the sector level for explaining influence.

Acknowledging the importance of the findings of both strands of literature, this research incorporates them into the framework to study the EU's influence in the ENP countries and addresses particularities that arise from the ENP's nature, which it suggests should be addressed in the evaluation rather than abandoning the analytical potential of the macro level conditions and entirely focusing on the sector specific conditions.

This argument is put forward as it should be noted that while the EU's influence has been suggested to be sectoral as argued in the external governance, there are also countries in the ENP that still aim for EU membership or at least identify with the EU which still may offer analytical importance and therefore these aspects should also be considered as potential variables. In addition, as it has also been suggested that the

EU's influence was overestimated when studying the CEECs, this research aims to pay attention to the external explanatory factors that could offer cross-conditionality and socialisation (Kobaladze and Tangiashvili 2006; Sedelmeier and Schimmelfennig 2005) and may have been induced by Russia, the US or international organisations. Moreover, even if previous Europeanisation research has strictly been drawing from the rationalist and constructivist debate, this research along the external governance aspect is also interested in the EU lead agencies and the programmes that are available in the ENP countries and also hypothesizes them to have importance where capacity and lack of knowledge rather than only political will can be a determinant factor for influence due to poor starting conditions. Finally, legitimacy may also have importance in regard to ENP countries' willingness to comply. The ENP was not necessarily perceived in a welcoming way in all of the ENP states. Therefore, the ENP recommendations may also appear as a foreign imposition (Schimmelfennig and Sedelmeier 2005:18), especially taking into consideration that in comparison to what it requests the EU has little to offer. Consequently, the question of legitimacy of the issue may increase a country's willingness to comply.

2.6 Analytical Framework and Hypotheses for Studying the EU's Influence in the Neighbourhood

Drawing on the lessons and gaps in the previous literature, this section will introduce the independent variables that are linked by hypotheses to the dependent variable of compliance. The independent variables cross between macro and micro levels, rationalist and constructivist variables and domestic, external and EU related variables.

Table 2.1 Operationalisation of Variables

	Macro Variables	Micro Variables
EU related	Strength of membership acting as a potential incentive (RC: Incentive)	Issue specific benefits and costs (RC: Incentive) Direct financial assistance (RC: Capacity) Technical framework for capacity building (RC: Capacity)
Domestic related	Identification with the EU (SI)	Legitimacy (SI)

External explanations	Cross - Conditionality/Cross-Socialisation (RC/(SI)); Russia/NATO/the US Conditionality/Pressure; IOs longer established role as a value base	Task based OSCE, USAID, Council of Europe assistance and capacity building (RC: Capacity)
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*RC = rational choice, SI = Sociological/Constructivist institutionalism

2.6.1 Macro Level

2.6.1.1 *The Strength of EU Membership Potential*

This variable refers to the EU's likelihood to grant a potential for EU membership. Europeanisation literature which emphasised membership incentive as a starting point for influence was able to explain convergence in the CEEC states. While the external governance literature was taking a step away from this aspect, the empirical research has not focused on the fact that some eastern partners may still be eligible for EU membership and that the strength of likelihood of the EU membership may work as an incentive for them to comply. This research acknowledges that there are still countries that believe they have a potential for membership and therefore this may work as an incentive for compliance. The immediate neighbours can be divided into two groups: those who are still eligible for membership and those who are not. Eligibility is based on the country falling within the European borders and fitting under the Maastricht Treaty article 49's criteria: any European country that respects the principles of the European Union is entitled to apply to join and therefore could involve other countries except for the Maghreb and Mashreq states (Cremona 2008:261).

While on the one hand the EU has not denied the option to the ENP states: 'It does not prejudge prospects for European countries that may at some future point wish to apply for membership, but it does not provide for a specific accession prospect either' (Ferrero-Waldner 2007), on the other hand Ferrero-Waldner told Reuters in Brussels on 3 May 2005 that near-neighbours like Ukraine, Moldova, and Georgia would be well advised not to apply for European Union membership now, because they would be rebuffed (RFE/RL Newslines 04/05/2005).

This relationship toward the question of EU membership potential may act as an incentive or as a disincentive. It therefore puts the EU in a position of needing to balance how little or much it promises so as not to lose its potential leverage and have the states turning their back on the EU but also on the other hand to consider how much

it can deepen relations without transforming them into countries that would satisfy the Copenhagen Criteria because the EU would find it very hard to deny membership on substantive grounds (Sasse 2008:3). The level of how the strength of the membership prospect varies is discussed in chapter four.

2.6.1.2 Identification with the EU

Apart from the variable of strength of the EU membership prospect, identification with the EU may be relevant in explaining differences in compliance. Constructivist and sociological institutionalism expect that enlargement politics are shaped by ideational and cultural factors (Schimmelfennig and Sedelmeier 2005:14) and therefore most relevant factors are a community or cultural match (see Checkel 1999; Cortell and Davies 2000). This ‘match’ or belongingness at the macro level is best described by identification with the EU as it refers to a situation when ‘the target states regard the EU as a valid aspiration group whose collective identity, values and norms they share and whose recognition they seek and to which they want to belong’ (Schimmelfennig and Sedelmeier 2005:19). Identification with the EU is important as it can encourage compliance because under these conditions the target states are more easily persuaded by the EU (2005:19). Those who like to be recognised as part of the European family of democratic nations: ‘find it painful to be shamed and shunned’ (Schimmelfennig *et al.* 2003: 493).

Whereas in the context of candidate states, researchers have only found identification with the EU to be partly influential, it is hypothesised here still to have importance as an explanatory factor in the ENP states. The EU may be more attractive as a reference point due to its values and norms in these countries which are weak democracies and still in the process of reform and which have complex relations with Russia. Moreover, it is relevant to be considered because the previous research, which was dominated by the governance by conditionality aspect, may have overestimated the rationalist factors in explaining compliance. The degree to which identification with the EU varies is discussed in chapter four.

2.6.2 Micro Level

2.6.2.1 Issue-Specific Benefits

While membership conditionality is not available for the ENP countries, the EU is able to use countries issue-specific incentives in the neighbourhood. Issue-specific benefit is

a rationalist variable. It is a strategy of reinforcement where the EU is offering a reward for the satisfaction of its demand to bring about change at the domestic level (Kratocvil and Lippert 2008; Schimmelfennig 2004). The issue-specific asymmetry of power which relates to the fact that the EU has much to offer through the ENP but the countries have very little, may enable it to work as an encouragement for promoting compliance. As Grabbe maintained in regard to CEECs, while the EU has all the benefits to offer (principally accession, trade and aid), the CEECs in comparison, have little to offer to the EU (Grabbe 2006). Thus, the EU is in a position of altering cost-benefit assessment of the countries through incentives and disincentives (Barbé *et al.* 2009). In the ENP context, it is positive conditionality that is mostly applied and referred to in respective documents. It concerns political (value-based) as well as policy (*acquis*-based) conditionality (Kratocvil and Lippert 2007). Whereas political conditionality is rather vaguely formulated in ENP documents, as it combines them with uncertain rewards, policy conditionality shows a clearer relationship between request and reward (Kratocvil and Lippert 2007:38). No negative conditionality so far has been used in the case of the three ENP states.² In general issue-specific incentives may be important in the countries which are part of the ENP as they need to consider the benefits case by case due to the fact they do not have the membership possibility as the ultimate reward (Wolczuk 2004).

2.6.2.2 Issue-Specific Costs

Costs have demonstrated to be able to prevent compliance without the membership incentive being available according to the previous literature. Rationalist institutionalist theories differ in regard to the cost-benefit calculations that states typically make (Sedelmeier and Schimmelfennig 2005:13). Neo-liberal institutionalism assumes that states care mainly about their own absolute gains and losses whereas realists expect that state actors take into account external autonomy and power (Sedelmeier and Schimmelfennig 2005). The costs assessed in this research are to do with issue-specific costs which are evaluated both at the rule adoption and rule implementation level. The costs at the formal compliance level emerge if the decision to be taken will split the political elite and thus can cause instability or opposition. While the implementation level does not face this kind of question having had the decision already taken, its implementation may be facing economic costs which are expected to be high if the

² Author's interview with an interviewee no.10, Brussels, June 2011.

action is continuous rather than once off and thus can affect decision-making both at adoption and implementation levels.

2.6.2.3 Direct Financial Assistance

This variable especially is related to the behavioural level of compliance. Apart from cost-benefit calculations compliance may also be impacted by factors related to economic costs of the policy change. The ENP states have lower development levels than the CEECs in general which may also limit their compliance even if they had the political will to implement or adopt rules. Therefore, financial assistance that is given by the EU to compensate the costs, may facilitate compliance. The levels of financial assistance in regard to specific sectors are discussed in regard to each country and sector in the case study chapters.

2.6.2.4 Capacity and Technical Expert Groups

Besides issue-specific benefits and financial assistance to compensate for the costs, the EU facilitates information exchange and capacity building through enabling involvement with its agencies and programmes (e.g. TAIEX, Twinning, FRONTEX, and Europol). They have been available for the ENP countries since 2006. The external governance literature calls this type of participation ‘networks’ or ‘negotiation systems’, (Börzel 2007:65) where partners have an equal position in the process and are based rather on expertise rather than political affiliation (Lavenex 2004; Lavenex and Schimmelfennig 2009). Besides EU conditionality and assistance these forms of activities can be assumed to be especially important in the ENP countries which lack expertise and capacity to the extent where some interviews confirmed that sometimes even if there is enough money for being able to reform the system, there is no one to do it.³

2.6.2.5 Legitimacy

Legitimacy of the rule may be important in encouraging compliance with the EU standards as ENP states are not part of the EU rule making process and any rule is likely ‘to have the stigma of foreign imposition’ (Schimmelfennig and Sedelmeier 2005:18). Therefore, legitimacy can be considered as an important factor in the decision making on whether or not to comply as it is argued that international norms are influential when they are seen as legitimate (Hurd 2007) and because legitimacy enables a ‘compliance

³ Author’s interviews with an interviewee no. 32, Chisinau, June 2010 and interviewee no.73, Kiev, December 2009.

pull' according to Franck (1988). Furthermore, Lavenex and Schimmelfennig (2009) found in the research that the more internationally codified the rules were the more they were complied with.

2.6.2.6 Micro and Macro Level External Pressures

The EU is not the only factor influencing the JHA issues in the ENP countries, however, the research which has studied the EU's role has made little reference to other potential external factors as it is expected that if the organisation is not in a position of offering membership the EU rules will then be followed. Apart from two main macro level independent variables, prospect of membership potential and identification, the countries may also be prone to other potential external conditionality or socialisation factors (Dimitrova and Dragneva 2009; Lavenex and Schimmelfennig 2009). External pressures can be conceptualised as cross-conditionality and cross-socialisation (Kobaladze and Tangiashvili 2006; Schimmelfennig and Sedelmeier 2005). These pressures can come from Russia, NATO or CIS which are the only actors beyond the EU in a position to offer incentives or socialisation points. International organisations such as the UN, Council of Europe and OSCE do not use conditionality, however, these organisations may also have an important role in terms of persuasion or socialisation in creating or restricting decision making or capacity which should not be overlooked when analysing the EU's influence.

2.7 Conclusion

This chapter discussed the literature in the study of the EU's influence and the framework and approaches that it had involved. In regard to EU influence in the ENP it focused on the external governance and Europeanisation beyond the EU literature. From previous literature and through investigation of the methods and findings, it identified variables which were formed as hypotheses for this research and thus the analytical framework including macro variables: strength of EU membership prospect and identification with the EU, and micro variables: cost and benefits, legitimacy, financial assistance and technical capacity groups.

This framework forms the basis for the study of the three most likely cases of ENP countries which allows generalisation on at least the necessary combination of conditions that were in place in each country even if it acknowledges the issue sector and country characteristics. It hopes to create conclusions on the potential influence of the EU and simultaneously to advance literature on the comparative aspect in Georgia,

Moldova and Ukraine and specifically in the JHA sector. The following chapter introduces the research design including operationalisation of the dependent and independent variables, case selection and methods.

3. Research Design: Cases, Methods and Data

3.1 Introduction

The previous chapter highlighted that there is a consensus in the literature that the EU has been influential in the CEECs because it was able to offer them a credible conditional membership perspective. As a consequence the motivation to study the EU's influence in the ENP in the beginning was scarce since the ENP did not offer a membership incentive. To clarify the potential of the EU to elicit influence in the neighbourhood the previous chapter introduced a framework for analysis and hypotheses for influence drawing from previous literature both on Europeanisation and external governance. Having clarified the hypotheses for the research this chapter presents the research design including case selection, operationalisation and measurement of the variables and data sources for the research. The first part of the chapter starts with case selection discussing both the country and issue selection. The second part introduces the dependent and independent variables. The last part discusses data and sources before concluding with a summary of the chapter.

3.2 Case Selection

3.2.1 Country Selection

The countries chosen are the most likely cases for the EU to be able to elicit influence in the neighbourhood because Georgia, Moldova, and Ukraine are willing for cooperation, and they are interested in the prospect of membership (Franke *et al* 2010; Wolczuk 2008). In all three countries cooperation with the EU first took place under the PCA and then the ENP and EaP frameworks but with all expressing their preference for bilateral relations. Other countries in the EaP have no interest in the membership potential (Armenia, Azerbaijan) and Belarus has even been denied the cooperation within the ENP in the past due to its authoritarian nature. Furthermore, among the eastern neighbours the three states of the research are the most democratic and therefore the most influence can be expected according to the Europeanisation literature (Flikke 2008; Freedom House 2008).

They have a common background of being post-Soviet states, they all had to start developing their state institutions from nothing due to lack of institutional structures and their progress has been challenged by corruption. They also have differences between them in regard to the likelihood of eventual membership and identification with the EU.

Whereas Georgia's strength of membership prospect is unlikely to be efficient in encouraging change due to the lack of a prospect, in Ukraine strength of membership prospect can be considered as a motivator for changes from 2002 to 2007 and in Moldova to some extent since 2005 and more so since 2009. In regard to identification with the EU Georgia has demonstrated most clearly the EU as an aspiration group on the basis of values and norms, whereas in Moldova and Ukraine the identification is not as clear. The categorisation of these three countries with regard to country level domestic variables is established in detail in chapter four.

Table 3.1 Country Selection

Country Selection	EU Membership Prospect Stronger	EU Membership Prospect Weaker
Identification with the EU higher	Ukraine 2002-2007	Georgia 2000-2011
Identification with the EU lower	Moldova after 2005	Ukraine 2007-2011 Moldova before 2005

3.2.2 Issue Selection

The issues that were chosen to be examined are priority areas in the JHA section of each of the three action plans. The research focuses on the issues of border management, migration management (readmission agreement), asylum, and human trafficking. The reasons for the selection of these particular issues are the following: overall, these four issues have not been a focus in the previous literature extensively as the research has mostly been dealing with democratisation questions and environmental and energy issue convergence. Furthermore, with the arrival of the ENP, JHA issues became the policy's priority (Knelangen 2007: 88) as the EU also wanted, through the ENP, to address many soft security threats of the region including human trafficking, illegal immigration and, thus, the interrelated issue of border management (Weber 2009). JHA issues are also chosen as they are more traceable than issues such as democracy as there are not so many specific organisations in the area and, therefore, separating the contribution of the organisations is easier.

Most importantly, the case selection is done with a view to ensure variation and focus on JHA issues offers a good starting point. Firstly, they show variation with regard to the key factors emphasised in the rationalist and constructivist debate focusing on incentives vs. questions of legitimacy. Issues in the JHA section include some issue-specific incentives for increased mobility and offer variation in the EU's approaches to

study issue-specific incentives. The level of legitimacy also varies between the less legitimate border management and readmission in comparison to asylum protection and the fight against human trafficking. Border management and readmission issues are not internationally codified, (although border reform is also promoted by other organisations), are self-interested requests by the EU and therefore, have lower values of legitimacy.

Secondly, they are selected in regard to their legal nature. As Lavenex (2009:37) maintained, JHA issues are marked by coexistence of ‘weak hierarchical legal interaction through community method (in the first pillar) and intergovernmental procedures (in the third pillar) and dominance of network governance in both pillars through transgovernmentalism. Whereas readmission is expected from the countries if they want to join the EU, border guard reform in terms of demilitarisation is part of the Schengen *acquis*. Asylum protection and the fight against human trafficking are enshrined in international law and mentioned for instance in the UN Convention and Protocol, and the three P’s (protection, prevention and prosecution) have become cornerstones in all international organisations such as Council of Europe, the UN and OSCE protocols or regulations for the fight against human trafficking. Whereas asylum protection has been part of the EU *acquis* as well, and even providing for its own requirements that go beyond the international regulations especially in terms of offering subsidiary protection, the fight against human trafficking was not part of the *acquis* in April 2011.

The issues traced among the four JHA areas were selected if they were clearly communicated in the action plans through wording such as: ‘ratifying or signing a protocol’; ‘approximating’ towards the EU standards; ‘setting up’ facilities; or ‘establishing’ an agency or strategy and hence have more clarity on the expected demands which helps to establish the requests’ threshold point for compliance. Issues were not included if they are just described in general terms such as to ‘continue cooperation’ or ‘enhance support’ etc. as they would be difficult to measure without having a clear end goal against which compliance can be assessed. Furthermore, these issues were chosen as the same four issues were present in the action plans of the three countries, thus, allowing comparison.

Table 3.2 Issue Selection

Issue Selection	Lower Legitimacy	Higher legitimacy
Clear issue-specific incentive	Readmission after 2005	Asylum protection after 2010
Less precise/no incentives	Border management before 2005	Fight against human trafficking

3.3 Methods and Measurement

My unit of analysis is the EU demands that were put forward under the ENP policy in the area of JHA and the formal and behavioural compliance in Georgia, Moldova and Ukraine. This research aims to understand when compliance takes place, what explains variation in compliance and what is the EU's influence in the neighbourhood through a research design that allows variation at a macro and micro level, and rationalist and constructivist variables. The extent of EU influence will be assessed by focusing on compliance with the demands formulated in the EU's action plans. The thesis identifies formal and behavioural compliance with the EU recommendations. The reason for variation in outcomes of the dependent variable (DV) is established through a comparative case study design covering three countries and four issues areas. The research design resembles a 'diverse-case method', which covers a full range of variation (Gerring 2007:1010; Seawright and Gerring 2008).

The time period of investigation starts from 2000, when the JHA issues were first mentioned in the neighbourhood in the EU country strategy papers, until the end of 2011. By the end of 2011, the ENP relationship had already deepened in these three countries either to the level of negotiations on Association Agreement in Moldova and Ukraine or discussions about its possibility in Georgia. This timeline allows enough time to see changes at the formal level and also how the country prepared for the implementation of the demands.

Results are drawn using process tracing, before-after comparisons and congruence methods which have been found to be useful in the previous research on the EU's influence in the CEEC countries. They aim to address limitations in studying EU influence especially in regard to understanding what is the EU's influence when different combinations of independent variables lead to the same result and to separate

EU influence from other influences (Keohane and Millner 1996) and from other domestic influences (Hurrell and Menon 2003).

Because many different conditions lead to the same outcome (i.e. compliance or non-compliance in this case) process tracing helps to identify the causal chain and causal mechanisms between the dependent variable and independent variables (Bennett and George 2005: 206). Before-after comparison helps to observe whether the value of the dependent variable changes as a result of the independent variables. It is more complex when it is likely that there are changes in more than one condition at the same time. The congruence method tests the consistency between expected outcome and conditions by testing whether an outcome holds according to theory (Bennett and George 2005: 181).

3.3.1 Operationalisation of the Dependent Variable - Compliance

Compliance with the EU action plan recommendations is treated as the dependent variable in this research. Compliance can be defined as a state of conformity between an actor's behaviour and a specified rule (Raustiala and Slaughter 2002:539) and 'non-compliance or violation occurs when actual behaviour departs significantly from prescribed behaviour' (Young 1979: 104). As the term compliance is usually referring, in the context of the EU to the *acquis* and thus to legally binding rules, some researchers prefer to use the term 'convergence' when referring to the recommendations that the EU suggests in the context of the ENP states. Nevertheless, my research starts the evaluation of the action plan recommendations, which are not rules in a legal sense, but as they often refer to similar standards in the *acquis* or which are the general practices of the EU, I will use the term 'compliance'. Compliance, which can be divided into three different types, is useful for understanding the different levels of states' behaviour toward the EU standards which are important in this study (Schimmelfennig and Sedelmeier 2005).

Previous literature has distinguished between three different forms of compliance: discursive, formal and behavioural. In this research the latter two will be in focus. Formal compliance means the adoption of a rule⁴ into national legislation according to the EU standards of the particular issue in question (Schimmelfennig and Sedelmeier 2005). Behavioural compliance refers to application/enforcement of this rule on the ground (Sedelmeier 2009). In general, formal compliance is considered to have taken place when the national law is adopted and fulfils the recommendations and is

⁴ Lavenex and Schimmelfennig (2009) call it transposition to national legislation.

considered to be non-compliant if there are no pertinent legal changes or there is a law that undermines the provision for a change. At the behavioural level compliance is considered to have taken place when the actions are carried out according to EU recommendations or demands and is considered non-compliant when actions are going against the law or if there are no changes at all toward the implementation of the regulation.

The ENP action plans are process orientated (Lavenex and Schimmelfennig 2009) which means that they do not describe a specified end but request approximation. Smith maintains ‘even when it is clear that the neighbour should be taking the action, it is not always equally clear how progress will be judged’ (2005:764). ‘Scattered throughout many action plans is much about how neighbours must “enhance institutional or administrative capacity” in particular areas. What that entails is not specified’ (2005:764). In order to be able to build the criteria for the measurement of compliance, the following sections describe the indicators in more detail for each issue. They are established by drawing on the secondary literature and on interviews. Table 3.3 summarises the indicators for different levels (full, partial, and non-compliance) of formal and behavioural compliance across the four issue areas that the following sections establish.

Table 3.3 Operationalisation of the Levels of Compliance

Border Guard Reform	Formal Compliance	Behavioural Compliance
Compliant	Demilitarisation of the border guard set into national law	Conscripts not in use and are replaced by professionally trained border guards who perform activities according to the EU standards
Partially compliant	Demilitarisation of the border guard set partially into national law	Conscripts are partially replaced and change toward full replacement is in progress
Not compliant	No demilitarisation legislation set	Conscripts are in place and there are no plans for replacement
Readmission Agreement	Formal Compliance	Behavioural Compliance
Compliant	The readmission agreement is signed	Readmission agreement implementation is prepared for by signing implementation protocols, bilateral readmission agreements, preparing for detention of third country

		citizens and by facilitation of reintegration
Partially compliant	NA	Some preparation as above taken
Not compliant	Readmission agreement is not signed	No preparation as above taken
Asylum Protection: principle of non-refoulement, subsidiary protection, minimum standards	Formal Compliance	Behavioural Compliance
Compliant	The principle of non-refoulement is adopted into national legislation and subsidiary protection is set into law as well as provisions for protection of refugees and asylum seekers	The country fully implements the principle, offers subsidiary protection and has provided conditions respecting minimum standards for refugees on the ground by providing accommodation, schooling etc.
Partially compliant	Country adopts legislation which indirectly covers the issue but not directly addressing asylum seekers or refugees	The country has taken steps by either training or allocating resources for its implementation
Not compliant	Country takes no action for providing legal base for refugee protection	No action has been taken
Human trafficking: punishment and prosecution	Formal Compliance	Behavioural Compliance
Compliant	EU and international standards are adopted by introducing legislation that provides punishment for traffickers	Punishment is put into place through prosecution and by imprisonment in all cases
Partially compliant	Human trafficking is set as a punishable act but not directly according to the international and EU standards but through existing criminal codes	Punishment is put into action but does not cover all the investigated cases
Not compliant	There is no legislation regarding the punishment of human trafficking	No punishment is put into action even if there are convicted cases

3.3.1.1 Definition and Measurement of Compliance with Border Management Requirements

Within the border management sector, border guard reform was expressed in all of the three countries' action plans. Even if it was not exactly defined in the action plan, interviews clarified that it consists of the same expectations as in the Balkan states

which have a road map outlining the specific tasks.⁵ Within border guard reform the priority areas are reforming the militarised border guards to a functioning law enforcement agency.⁶ The clear expectations have been set in the integrated border management programme (European Commission 2008d) which is one of the flagship programmes for the EaP countries. To become a law enforcement agency requires demilitarisation of the staff and the cessation of the use of conscripts in order to have a professional trained staff.⁷ Therefore, border guard reform is understood to have taken place and be compliant at the legislative level when the domestic law defines the transformation of the border guards from a military agency to a rule enforcement agency and uses professional staff for border management duties. At the behavioural level compliance is understood to have taken place when conscripts are being replaced by official border guards which carry out a police and law-enforcement function with investigatory powers instead of duties under militarised status and the training of professional border guards is taking place under consideration of the Schengen rules (Boda and Kakachia 2005).

3.3.1.2 Definition and Measurement of Compliance with Readmission Agreement Requirements

Readmission is defined as the commitment of a country to take back its own nationals and also transited persons through their territory with which the EU does not have a readmission agreement (Johanssen-Nogues 2008; Lavenex 1999). The readmission agreement is considered to be compliant at the legislative level when it is signed with the EU. At the implementation level readmission agreement is regarded being compliant when the procedures of readmission are carried out with respect to EU and international human rights standards.

3.3.1.3 Definition and Measurement of Compliance with Asylum Seeker and Refugee Protection Requirements

Asylum seeker and refugee protection is an issue that is requested from the candidate states before accession and it is also included in the *Acquis* (see: European Commission 2003b). To be able to assess whether the ENP countries comply with the EU demands it is important to acknowledge what EU law includes in the area of asylum and to understand its differences to international law as the EU is both advocating compliance with its own and international standards in its action plans.

⁵ Author's interview with interviewee no. 46, Chisinau, June 2010.

⁶ Author's interview with interviewee no.29, August 2011.

⁷ Author's interview with interviewee no. 26, Kiev, December, 2009.

Whereas the EU rules respect the international standards and draw from them, the EU standards in protection go beyond the 1951 Convention definition of refugee status and protection standards. The 1951 Convention defines who is a refugee, the respect for the principle of non-refoulement and lays down ‘minimum standards for the treatment of refugees’.⁸ The Convention also outlines a refugee’s rights including freedom of religion and movement, the right to work and access to education and travel.

Besides enabling opportunities for a refugee status, the EU standards also recognise those who do not qualify under refugee status and facilitate protection under subsidiary or complementary forms of protection.⁹ The reason for the EU’s additional forms of protection is to create a common standard applicable within the EU as previously there have been cases of a variety of interpretations of the refugee definition and also because the 1951 Convention does ‘not cover all aspects and situations faced by asylum-seekers’ (IOM Migration Review 2008).

The measurement of asylum seeker protection, therefore, has a dual aspect as the EU refers both to its own standards and to international standards in the action plan. Compliance, therefore, is measured by assessing the convergence of the country’s legislative level to the EU and international standards referring to the legal provisions at the national level on offering refugee status or alternative forms of protection introduced by the EU. It also assesses compliance with the principle of non-refoulement and minimum standards. The demands are considered compliant when the country has set the status of refugees into legislation and clarified the forms of subsidiary and complementary protection into national legislation. At the international level compliance has taken place even without subsidiary protection if it complies with the potential for granting refugee status.

At the behavioural level tasks are considered compliant when the country has set protection through basic conditions such as accommodation and access to travel documents on the ground and implements the principle of non-refoulement. Examining a country’s ‘rule selection’ (Lavenex and Schimmelfennig 2009) and whether it

⁸ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <http://www.unhcr.org/refworld/docid/3be01b964.html>.

⁹ The European Commission proposal for ‘a directive laying down minimum standards for the qualification and status of third-country nationals and stateless persons as refugees or as persons who otherwise need international protection’, Directive 2004/83/EC, Adopted by the Council in April 2004.

chooses to comply with the EU or international standards¹⁰ gives an additional and interesting outlook on the country's preferences and the potential for the EU's influence in the country.

3.3.1.4 Definition and Measurement of Compliance with Punishment and Prosecution of Crimes of Human Trafficking Requirements

Within the sector of human trafficking, the focus of this research is on the criminalisation of human trafficking. In the international regulations three main issues are mentioned in the UNHCR, OSCE and Council of Europe regulations which are known as the three P's. They refer to prevention from becoming a victim, protection of victims and punishment for traffickers. The EU principles for the fight against human trafficking were not part of the *acquis* until April 2011 but were voluntary. However, the April 2011 Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims replaced the Council Framework Decision 2002/629/JHA and it is now applicable to all member states (Council of the European Union 2011). The directive, in regard to punishment of criminals, includes a provision that the offence is punishable by a maximum penalty of at least five years of imprisonment and in cases of the victim being specifically vulnerable a maximum penalty of at least 10 years of imprisonment.

For the purpose of this research, the focus is on the punishment and prosecution in section III¹¹, which gives a potential point for comparison between whether the countries select the EU or the international regulation, as the EU has its own recommendations for the length of sentences. Compliance with the human trafficking action plan recommendations are considered to have taken place when punishment of trafficking has been set into the national legislation of a country and also prosecutions are carried out.

3.4 Operationalisation and Measurement of Macro-Level Variables

In the previous chapter the six independent variables were introduced together with the hypotheses linking them to the dependent variable. This section will operationalise them

¹⁰ EU also offers complementary protection; EU non-refoulement principle also includes reference to torture.

¹¹ Chapter III - Investigation, law enforcement and prosecution; IV- Prevention of trafficking in human beings IV and V. -to Protection and assistance. See: Organization for Security and Co-operation in Europe, *OSCE Action Plan to Combat Trafficking in Human Beings*, 24 July 2003, Decision No. 557; PC.DEC/557, available at: <http://www.unhcr.org/refworld/docid/4a54bc2dd.html>.

in order to make measurement possible. These variables are measured and discussed in detail in chapter four.

3.4.1 The Strength of Membership Prospect

EU membership potential has previously been demonstrated to depend on whether the country is European, as seen when Morocco was rejected outright, and on the fulfilment of the Copenhagen Criteria against which the CEECs were assessed when applying to the EU or overall whether it poses risks or benefits the EU. The Copenhagen Criteria states that:

‘Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union’.

Because in the CEECs membership conditionality was considered as the main reason for the EU to be able to influence countries, it is also hypothesised here that if the country is European, reaches the level of Copenhagen Criteria at least in some aspects, the goal has gained support from the EU, and if there are no threatening or insurmountable issues which cannot be overcome, they can be assumed to still have a potential to accede to the EU at least in principle. This may encourage compliance with the EU standards as in regard to the ENP countries the EU has left the membership question ambiguous.

Even though it has been stated in the research that if a country still has that prospect it may encourage a country's willingness to comply (Freyburg *et al.* 2011), the research has not actually looked at the EU's position where the countries stand in relation to each other and to what extent they actually could be eligible for the membership and how this is impacting the domestic attitude and their perception on whether to see this ambiguity as a substitute or as a stepping stone for EU membership (Tulmets 2006; Meloni 2006). Therefore, the strength of the EU membership prospect is considered as a variable in explaining a country's motivation for compliance.

In order to measure the potential for EU membership prospect three indicators are used drawing to EU integration theories. Firstly, sociological institutionalism assumes that EU integration is possible depending on the extent to which the country fulfils the set

criteria of the EU (Schimmelfennig 2003). This was demonstrated when the Copenhagen Criteria were utilised to assess the suitability of the enlargement rounds of 2004 and 2007 as well as in granting candidacy status to Macedonia, Serbia, Turkey and Croatia.¹² Therefore, development of the ENP countries' reforms are assessed from 2000 to 2011 utilising four different sets of data and in order to establish membership potential: democracy, rule of law, human rights and functioning market economy and countries are rated according to whether they reach the EU average, new membership average, candidate average and in relation to each other.

Secondly, liberal intergovernmentalism (Moravcsik 1998; Moravcsik and Vachudová 2003) assumes that the integration is dependent on whether the EU benefits from the country's accession, thus the benefits the EU would gain from the country's accession and the threats it poses if the EU was to accept it, are also analysed.

Thirdly, acceptance of a new candidate country requires a unanimous decision between the EU institutions and therefore in order to understand the likelihood of a certain country being considered as a candidate, it is more likely if there is consensus in the EU on supporting the country's potential integration to the EU. Therefore EU support also needs to be analysed.

Fourthly, the country's own perception is also taken into consideration. Despite the likelihood of the membership prospect in the EU, the country's own perception on whether it considers the ambiguity of the EU membership prospect as a potential or not, dictates whether this uncertainty of EU membership can work as an incentive.

Membership prospect is considered high if the country reaches the candidate or member state values in most aspects and if inclusion of the country could be beneficial for the EU and there are no clear threats posed by the country's accession and the EU institutions have a consensus on supporting the country's closer integration. Membership prospect is considered medium if a country reaches some of the candidate states levels, is a neutral choice for the EU in regard to what it could offer to the EU and in terms of posing threats and has some support from the EU officials. Membership potential is coded low if there are low levels of fulfilling the EU criteria for membership, it poses threats to the EU and has little support from the EU officials for future integration towards EU.

¹² Croatia is expected to join the EU in July 2013.

3.4.2 Identification with the EU

Identification with the EU is the other macro level variable that is hypothesised to promote compliance. It is expected to be important to promote compliance especially in the ENP countries where the credible membership perspective does not exist. Identification with the EU may make a difference in willingness to comply, because according to constructivist understanding, if a country identifies with an aspiration group it will try to adhere to the standards of the group because if it deviates from the practices it would feel shamed or shunned (Schimmelfennig *et al.* 2003). Schimmelfennig and Sedelmeier (2005) argue that ‘non-members states are more likely to be persuaded by the EU to adopt its rules if they regard the community of states represented by the EU as a valid aspiration group ‘whose collective identity, values, norms they share, whose recognition they seek and to which they want to belong’ (2005:19). In order to understand the conditions under which compliance takes place and to determine the levels of the EU’s potential in the ENP states, identification with the EU is also evaluated in the three states.

To operationalise identification with the EU, as it is a complex task to separate in practice identification with the EU from a desire to join the EU for material benefits, measurement is enabled by drawing from the definition by Schimmelfennig and Sedelmeier (2005) which considers identification with the EU as belonging to a group which they share identity, values and norms.

While feelings of belonging to the EU is possibly best reflected in the expressions of wanting to become an EU member, as it has been argued that internal identity and identification is best reflected in foreign policy choices (Gülseven 2010; Telhami 2002), it also can be a reflection of hoping to gain benefits even without considering the EU as an aspiration group and therefore ‘belonging’ needs to be further refined. This is done by evaluating whether there are also other orientations the country wants to belong to and the reasons for that orientation.

Consequently, the primary orientation is established through examination of countries’ perception on the basis of presidential annual addresses on the EU, Russia, CIS, NATO and the US and establishing a preferred direction, and the reason for it. Presidential annual addresses are used as they are expected to reflect the best indication on the view on the political orientation of the country, as they are directed both to national and

international audiences (Timuş 2009). Manifesto Group (MFG) datasets also offer information on the political party's perception of the preferred foreign policy direction in order to establish the general view on the leading elite since independence to date. Political party datasets reveal more of the full political outlook of the country and not only the leading elite.

In addition to the 'belonging' indicator, the common values and identity are also established. Especially the MFG datasets are used to establish the country's perception on promotion of democracy, human rights, rule of law and market economy. They offer a good source of data when it would be impossible to have comparative data on the political elite view without interviewing all the representatives.

The identity of the state is established by references of the country being European and to a common identity with the EU in contrast to nationalist tendencies or focus on other identities. The data from the MFG datasets section on nationalist tendencies were used. All the data were further enriched by literature and interviews.

In regard to establishing population identification levels, data were drawn from a variety of population polls conducted by the Euro Barometer, International Republican Institute (IRI), and the domestic think tanks. In regard to Georgia, Caucasus Research Resource Centre (CRRC), in regard to Moldova, Idis Viitorul and Adept and in regard to Ukraine, Razumkov centre offered the popular polls that were comparable including similar contents. Four questions that have featured in the population polls and available for all the three states are used to establish the level of identification with the EU. To establish 'belonging', the data on primary partner and wishes to join the EU were utilised. In regard to 'shared values' data on what the EU integration meant to the population were utilised and finally 'shared identity' of the population relies on the data on answering the primary identity that the population identifies themselves with.

The overall data are strengthened by the survey data which includes opinions of the major parties on what the EU represents to them thus providing an opportunity to understand whether they see the EU in terms of benefits or values. However, membership willingness cannot solely be regarded as a reflection of these countries' identification with European values due to the fact that even if society's elite is very pro-European and willing for EU membership, the citizens at the national level do not

necessarily identify with the EU at all (Bruter 2003). Thus, also public opinion was considered as part of the analysis.

Identification with the EU is considered high if orientation toward the EU is motivated by considering the EU and its values in positive terms, and considering itself as European or being part of the European family. Identification is considered medium if the presidents and the parties views differ but demonstrate some identification with the EU. Identification with the EU is considered low if the country orientates to the EU but does not have an interest in common shared values and does not consider itself as having a European identity.

3.5 Operationalisation and Measurement of Micro-Level Variables

3.5.1 Issue-Specific Benefits

The rewards that the EU is offering under the ENP are related to market access, visa facilitation or to further participation in EU agencies. Firstly, the action plans mention that further cooperation and assistance is always related to respect of the EU standards.¹³ Secondly, the more specific incentives such as market access, visa facilitation and visa free travel have been mentioned in the context of particular tasks. In the area of JHA issues, the ENP's main incentives are visa facilitation and assistance. When the EaP was launched, the EU also announced as a long term goal visa liberalisation for the EaP countries when borders are more secure. The issue-specific benefits are considered high when it is directly linked to a reward either by the EU explicitly promising it or if the reward is a common procedure as a part of a deal. It is considered medium if the country can expect a reward but it is not directly linked to any tasks but rather referred to a group of tasks that the issue can be a part of. Incentives are considered to be low if there are no incentives offered in regard to the demand.

3.5.2 Issue-Specific Costs

The issue-specific costs variable takes into consideration the costs that occur at the legislative and behavioural compliance level. At the formal compliance level the costs can emerge if a law is passed and if the new regulation undermines government practices of power preservation or changing power relations between governmental

¹³ Even if the action plans mention that financial assistance is conditional on continuing progress according to the plan, interviews with the DG Home Affairs and EuropeAid representatives (June 2011) clarified that there have been no cases where assistance would be taken away if progress would not be satisfactory as it would be contradictory for the wider principle of supporting progress. Only in extreme cases such as Syria has withholding assistance been considered.

actors (Schimmelfennig 2005) or if it is to do with controversial issues in the country (Grabbe 2004) which can cause instability within the leadership or between the public and the leadership. Political costs are considered high if the law undermines power preservation or causes instability or controversy within the elite. They are considered low if it does not change the power structures and if there is a consensus between the political actors on the adoption of the law. At the behavioural compliance level issue-specific economic costs can occur if the implementation of the issue involves complex bureaucratic or institutional procedures (Dimitrova 2005) or if it is expensive to implement in economic terms. The costs are considered high if the procedures are continuous and require maintenance and a permanent expense from the domestic budget. The costs are considered to be low if they are one-off tasks and do not require more than one contribution from the domestic budget.

3.5.3 Financial Assistance

Financial assistance that the EU provides may be beneficial to overcome the issues that could be complied with due to political will but are held back due to lack of capacity, especially in technical issue areas at the practical application level. Financial assistance by the EU has been organised in the JHA area through Tacis and thematic funding BB7-67 and Aeneas until 2007. ENPI pooled the funding tools since 2007 and thematic migration and asylum section allocates funding for the JHA related issues since 2007. The allocated financial assistance is considered high if it covers all the costs of the EU demand (Schimmelfennig 2009), medium if it covers some costs and low if no financial assistance is given in the area.

3.5.4 Capacity and Technical Expert Groups

When the EU launched the ENP it soon after also made some of its agencies available for the ENP countries participation. As these agencies provide technical expertise and cooperation and in general more expert contacts they may promote compliance with the EU standards. This variable is operationalised so that it is considered high if the EU related networks involve governmental actors through TAIEX, Twinning and FRONTEX and in addition to that involve cooperation with the international organisations and facilitate civil society partnership at the ground level. The expert group variable is considered medium if the EU programmes and agencies involve some levels of the society and low if there are no EU related capacity or expert groups in place.

3.5.5 Legitimacy

As legitimacy varies only depending on the issue and not according to time or countries these values apply to all countries of the study and are discussed here instead of in each individual country chapters in order to avoid repetition.

- a. Border guard reform requests are also promoted by other organisations than only the EU. However, they are not codified in international law and the requests demonstrate a strong EU self-interest to increase its own security. Therefore the request is not considered as fully legitimate.
- b. The readmission agreement was established as an efficient way of fighting illegal immigration already in the PCA documents. The agreement, in addition to some third states, is also requested from all of the EU member states in order to have ‘shared responsibility’ on migration issues (Ferrero-Waldner 2006b). Even the own country citizens’ readmission is an obligation under customary international law (Cassarino 2010:13), there are no obligations for any country to readmit non-nationals who transited through the territory of the state en route to another destination (Roig and Huddelston 2008). In addition, the EU acts from self-interest by transferring responsibility for potential irregular migrants to be dealt with outside of its borders (Smith 2005:764). Furthermore, considering the low capacity, facilities and practices in the ENP states, it is unclear whether it will undermine human rights standards in regard to treatment of detainees.¹⁴ There is not always time and resources to assess all of the people’s situations and this may result in cases where people are readmitted back to countries where they are faced with detention or execution.¹⁵ It may also put readmitted migrants into a position where they are likely to irregularly re-enter the EU even if it is often through desperate or fatal channels.¹⁶ Therefore the request is low in legitimacy.
- c. Asylum protection and enhancement outside the EU’s borders has received controversial views: FRONTEX was for instance criticised by the European Council on Refugees and Exiles (ECRE) and the UN Refugee Agency

¹⁴ Author’s interview with an interviewee no. 46, Kiev, December 2009.

¹⁵ Author’s interview with an interviewee no.68, Kiev, Dec 2009.

¹⁶ See: UNHCR Migration and Development: a Human Rights Approach.

(UNHCR) for the EU posing double standards by strengthening its own borders so that it is difficult even to get access to an EU country and apply for asylum, when at the same time in third states the EU intends to enhance their capacity to deal with irregular immigrants and asylum seekers.¹⁷ Furthermore, the EU's action is seen as driven from the EU's self-interest as it would also reduce the number of refugees within in the EU and the EU's responsibility to deal with refugees. However, as the focus here is particularly on protection of the refugees by respecting the principle of non-refoulement and minimum standards of protection which are to do with human rights and are coded in international law the request for these issues by the EU are also understood to be legitimate.

- d. The fight against human trafficking principles are presented internationally most importantly in the UN convention against transnational organised crime and its three protocols, Palermo Protocols and the OSCE action plan for combating trafficking in human beings. All of these regulations cover three main issues in regard to human trafficking: protection, prevention and punishment. For instance, Palermo Protocol covers punishment by recommending that 'the State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally'.¹⁸ The OSCE action plan calls for 'legislative provisions for effective and proportionate criminal penalties, including imprisonment, that take into account the serious nature of this crime'.¹⁹ In regard to the ENP states the EU has mentioned in the action plans the issue of human trafficking by referring both to the UN and OSCE principles especially pointing out the chapters III, IV and V in regard to Georgia, Moldova and Ukraine. The fight against human trafficking can be considered as a legitimate request as it is included both in international and EU law.

¹⁷ Refugee Council and the European Council on Refugees and Exiles (ECRE) Joint Response to Select Committee on the European Union Sub-Committee F (Home Affairs): FRONTEx Inquiry, 2007.

¹⁸ UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, available at: <http://www.unhcr.org/refworld/docid/4720706c0.html>

¹⁹ OSCE MC.DEC/2/03.

3.5.6 External Micro and Macro Level Pressures

External macro and micro level pressures refer to conditions which are creating either cross-conditionality or cross-socialisation at the macro or micro level. It is considered important as cross-conditionality or cross-socialisation, referring to other institutions' influence, can dilute the EU's influence (Tangiashvili and Kobaladze 2006:13). Macro level influence is considered high if there are other countries or international institutions that have longer or deeper interdependence than the EU in the area and low if they are not competing with the EU. Micro level pressures and assistance are considered high if they are considered the primary source of pressure, assistance or conditionality instead of the EU and low if there are no organisations which are offering conditional benefits or technical assistance.

3.6 Data and Sources

The research design is longitudinal and data were collected for each variable. Longitudinal data allow measurement of change 'from one period to another' (Menard 1991). Data are presented in a raw table which allows for drawing conclusions of the conditions when compliance takes place and also informing the conditions that are not relevant for compliance. In acquiring data, triangulation was aimed for by sourcing data by interviews (state, EU, NGO actors) by analysis of official documentation, and reports by civil society organisations and think tanks.

Data were collected both from primary and secondary sources. Primary data consisted of interviews, EU and official documents, datasets and surveys. Secondary data included literature that involved Europeanisation on the CEECs, Europeanisation beyond the EU, external governance and new institutionalist perspectives as guidelines for the research design. Reports from international organisations, think tanks, NGOs and news from three country media sources provided insights on the development of the relations between the EU and the countries, developments in regard to challenges in implementation and compliance in the specific JHA issues.

3.6.1 Primary Data

3.6.1.1 Interviews

In total 73 interviews and meetings were carried out in Tbilisi, Chisinau, Kiev, Odessa and Brussels (approximately the same amount in each country). They were conducted between December 2009 and June 2011 apart from a few which were already conducted

in April 2009. Some interviewees were further contacted by email to acquire up to date information in July and August 2011. The annex contains the names and affiliation of the interviews and in those cases where the interviewee preferred to stay anonymous only the place, status and time is indicated.

All interviews were semi-structured and thus allowed interviewees to elaborate on their experiences. Apart from a few occasions all the interviews were tape recorded and transcribed subsequently. Most interviews were conducted in English apart from three that were conducted with the help of a translator. The purpose of the interviews was to gain information on sources not available on official documents or to clarify the EU's positions in using its tools and conditionality and country's governance actors' motivations for compliance and the process that has been taking place in regard to the negotiation and implementation of law in each policy sector. They were important in understanding the measurement of the issue areas and in determining when they could be considered as compliant. They also shed light on the political processes and costs when other data were scarce and overall helped to check against other data.

The questions posed through the interviews were open-ended and started with general questions which were directed to all interviewees. More specific questions dealing with the particular policies were directed for the specialists in the particular area. The more general questions covered relations before and after the ENP, priority JHA areas, and main obstacles in EU cooperation, implementation and motivations for EU relations and other external actors' role in EU country relations. In the policy specific areas the questions aimed to establish the status before EU involvement, perception of the EU benefits and capacity tools, the challenges in negotiation and disagreements in regard to legal approximation and the domestic obstacles and challenges for implementation. Furthermore, it aimed to establish what the role of the other actors was in comparison to the EU and what the EU could do more to support the progress.

To get an unbiased view the domestic actors in each country were interviewed from the following groups of people: in the target countries at the governmental level officials under the Europeanisation integration department were interviewed to gain general information of the motivations and EU-relations, the different ministry officials from the Foreign Ministry, Euro-Atlantic Integration and Ministry of Interior responsible for the four different issue areas were interviewed in regard to progress and challenges in each sector and political party representatives clarified their position on European

integration and future EU relations. EU delegation representatives were interviewed furthermore to provide understanding on the EU tools and in general relations between the EU and the target country, local EU set processes and programme representatives i.e. EUBAM, Twinning, GEPLAC, EUSR Georgia, Bommoluk and Twinning agencies and projects provided more information on the specific tools and strategies and development on the ground, international organisations such as OSCE, Council of Europe, IOM and Söderköping process, were interviewed to gain a view on the cooperation with the EU and also to understand the EU's leverage in comparison to other actors. Furthermore, local think tanks, independent experts and NGOs' provided information on the processes on the ground.

In Brussels interviews were conducted with representatives from the DG Home Affairs responsible for border management, migration management, asylum and the fight against trafficking of human beings. The DG EEAS desk officer for Georgia, Moldova and Ukraine provided country specific information and DG RELEX representatives were clarifying questions on financial aid. Furthermore, the future role of the EU and the EaP countries and the question of potential membership prospect were discussed with representatives from the Parliamentary Committee for the ENP and the EaP. Interviews also included representatives from Ukrainian and Moldovan missions for the EU which provided current information on EU relations in each JHA issue area.

3.6.1.2 Official Documents, Datasets and Surveys

Other primary data sources included official EU and government documents, datasets from international organisations and survey data. The data were used both for establishing the levels of the EU membership prospect and identification with the EU variables as well as levels of independent variables in regard to the four issue areas.

To establish an understanding of the strength of the EU membership prospect and identification with the EU, foreign policy strategy, security documents and national action plans of each country were used as starting points as they demonstrate the orientation and future foreign policy stand and aims of the country.

The questions to do with the EU membership prospect and the criteria toward the EU benefited from data that are already available from several institutions which have established standards and therefore facilitated comparison. These sources of data were beneficial for establishing the levels which the EU regard as crucial for its integration

i.e. democracy, human rights, rule of law and functioning market economy (i.e. Freedom House, Nations in Transit, World Bank).

In regard to the public's view on the potential of membership, NGO's provided survey data collected by Razumkov centre in Ukraine, Viitorul, and Soros Institute in Moldova, Institute of Policy Studies and Open Society Institute in Georgia.

At the society level the above mentioned NGO's also provided survey data on European identity and motivations for joining the EU. Identification at the domestic level was established by using a dataset collected by Timuş which included opinions on major parties' orientation toward the EU. In addition, the dataset on identity by Light *et al.* (2005)²⁰ helped to establish perceptions on identity in Moldova and Ukraine. Overall, political leaders' speeches and statements were used to measure the perception on the EU membership prospect and motivations for European integration

In regard to issue-specific conditions covering the four JHA areas EU documents were assessed between 2000 and mid-2011. The main documents that were reviewed were the action plans, progress reports, financial programming documents and programme fiches, national action programmes and National Indicative Programmes (NIP) and country strategy papers in regard to each country. They helped to establish the EU demands, incentives and rewards in regard to requests and assistance, financial support and the level of progress.

The domestic progress reports and monitoring scorecards that were made available by the Ukrainian and Moldovan mission to the EU and Georgian MFA Department of European Integration were beneficial in gaining more specified information on the level of progress that was only briefly described in the EU document.

RefWorld data on migration and refugee related law proved a very beneficial source for providing translations of passed laws in Moldova, Ukraine and Georgia in order to follow up the legal changes. Furthermore, the available data on migration and asylum statistics from UNHCR and Söderköping Process were helpful for establishing the amount of migrants, refugees, and asylum seekers. Trafficking in Persons (TIP) report data provided rich information on court cases and prosecutions in each of the countries from 2000 until 2011.

²⁰ Forthcoming in 2012 book by Light *et al.* consisting identity data beyond the EU.

3.6.2 Secondary Data

Besides the guiding Europeanisation literature and external governance literature that was introduced in the previous chapter, the research used news sources from each country as well as reports from a variety of institutions such as ICG, Human Rights Watch, Transparency International, CEPS, IOM, UNHCR, ECRE which are rich in detail in the specific topics of the research and which are not yet covered in book length copies.

3.7. Conclusion

This chapter introduced the research design including case selection, methods and data for the research. It demonstrated that the research followed a principle of case study design and that case selection was allowing maximum variation and the measurements and methods were drawn on the previous literature, interviews, official documents and international datasets. This design sets the basis for the empirical nature of the thesis in the following chapters. Chapter four focuses on studying the levels of ‘strength of membership prospect’ and ‘identification with the EU’, in Georgia, Moldova and Ukraine before moving onto issue-specific chapters.

4. Strength of Membership Prospect and Identification with the EU in Georgia, Moldova and Ukraine

4.1 Introduction

Following the Rose Revolution Saakashvili equipped all the institutional buildings and the Parliament with EU flags alongside Georgia's own flag to denote that Georgia's future orientation lay within the EU family (Grant and Leonard 2008). During the Russia-Georgia war in 2008 USA and EU flags were waved in the streets of Tbilisi. In Moldova people chanted 'We want to join Europe', flying EU flags while protesting against the Communist election victory in April 2009 (Wroeble 2010:1). Similarly in Ukraine 'Euro-signs' started appearing in the shop fronts in early 2000 reflecting that anything with Euro-affix would be something of a higher quality (Getmanchuk 2009). These three ENP states: Georgia, Moldova and Ukraine, since the mid-1990s have announced their wishes to be considered as potential EU candidates and have expressed that their history and orientation lay with Europe in their rhetoric and through symbols.

This chapter demonstrates how the levels of the strength of the EU membership prospect and identification with the EU vary between the three countries. The results are presented in the conclusion on a table which compares the indicators used to evaluate the differences between the three countries. These macro level conditions are measured in order to test them together with the issue-specific hypotheses in the country study chapters 5, 6, and 7 and to allow the creation of conclusions on the logic of compliance, whether compliance is driven by macro or issue conditions related to EU or domestic or external reasons and the types of EU tools and conditions that are the most influential.

This chapter argue that Georgia has the low prospect for EU membership, however, identifies most with the EU. Moldova's strength of EU membership prospect was low until 2005, medium until 2009 and high subsequently and it identifies less with the EU because it holds loyalty to both Russia and the EU. Ukraine's strength of EU membership prospect has also varied from the highest score of 2002-2007 to medium before and after it. Identification has also been hovering between the EU and Russia between the Western and the Eastern side of the country and also the elite.

The first part of the chapter develops the arguments in regard to Georgia. The second section focuses on Moldova and the third section on Ukraine before concluding with the main commonalities and differences.

4.2 Strength of the EU Membership Prospect and Identification with the EU in Georgia

A Georgia-EU relationship formed rather slowly as the EU's attention throughout the 1990s was focused on the Balkans and to the more immediate neighbourhood. Despite Georgia started expressing its interest for the first time in EU membership already in the late 1990s. While Georgia's Europeanness has been debated, for instance becoming apparent during the accession negotiations to the Council of Europe, Georgia has always considered itself as a country which is European but is located in the non-European geographical area (Jones 2003). This perception was created through experiences where it found itself to be different firstly from the neighbouring Muslim countries, and secondly as it considered itself separate from other countries under the Soviet Union because of its opposition to communism (Jones 2003: 89-92). These differences made it associate itself with Europe with which it also shares Christian and historical roots, thus, allowing them to refer to themselves not only as Europeans but the most ancient Europeans (Müller 2011). EU membership prospect has not been strong all the time and the realisation of it not being a short term goal in Georgia is therefore unlikely to have been encouraging compliance with the EU standards. However, identification with the EU has been strong early on since its independence which may offer more of an explanatory factor for compliance.

4.2.1 Strength of the EU Membership Prospect in Georgia

4.2.1.1 Fulfilment of Europeanness and the Copenhagen Criteria

Georgia's geographical Europeanness has not always been agreed upon and consequently neither was its potential for EU candidacy. During the 1990s Georgia was seen geographically as a bridge between Asia and Europe rather than fitting into the European periphery and therefore 'Georgia's chance of being able to be fully integrated in the European Union may be regarded as nil' (Coppieters *et al.* 1999:46). When Georgia started negotiations to become a Council of Europe member it meant a lot for the elite because in 1999 membership in the organisation was seen to serve as a confirmation of one's 'Europeanness' (Siaroff 2000:35). However, it was only when Georgia was included into the EaP that EU officials considered it as a European country which would also be able to apply for EU membership.²¹

²¹ Author's interviews with an interviewee no. 43 and interviewee no. 45, Brussels, June 2011.

Even though Georgia's Europeaness was not agreed on by the EU institutions or its member states in the first years of independence, Georgia's convergence with the Copenhagen Criteria has been the most successful among the three ENP states according to the six indicators covering the four political and economic criteria of the EU for accession states (see Figures 1-4 in the Appendix). Georgia has scored the highest in three issues out of six whereas Moldova and Ukraine scored highest only in two or one areas respectively, according to the datasets used for evaluation (democracy, rule of law, human rights, economic stability).

The democracy indicator shows that Georgia's scores situate between Moldova and Ukraine. It did not reach member or candidate states' standards either. The score has also deteriorated since 2008 when Saakashvili managed to change the constitution to increase the President's power. Consequently, the Freedom House removed Georgia from the list of electoral democracies in 2008 (Omelicheva 2010).

Despite low democracy scores, in the second indicator, the rule of law, which consists of corruption and independence of judiciary ratings, Georgia has not only reached the member state levels but it has surpassed the average level of the candidate states from 2008 onwards to date and its scores demonstrate an improving situation. Georgian scores also indicate that it is the least corrupted out of the three countries. For independence of judiciary Georgia did not reach the levels of the candidate and member states and only had better ratings than Ukraine. Similarly to Ukraine its score has reduced from 2006 to 2009 when the latest results were available.

The third issue area, human rights, includes standards both from physical integrity rights and empowerment rights.²² Georgia did not reach any of the levels of the previous member states or the candidate states in regard to physical integrity rights and has lower scores than Moldova and the same as Ukraine. In the new empowerment rights rating Georgia in 2008 had a higher score than the average of Romania and Bulgaria and also the highest of the three states.

²² Integrity rights consist of Torture, Extrajudicial Killing, Political Imprisonment, and Disappearance indicators. It ranges from 0 (no government respect for these four rights) to 8 (full government respect for these four rights); empowerment rights consist of an index constructed from the Foreign Movement, Domestic Movement, Freedom of Speech, Freedom of Assembly & Association, Workers' Rights, Electoral Self-Determination, and Freedom of Religion indicators. It ranges from 0 (no government respect for these seven rights) to 14 (full government respect for these seven rights). (Source: CIRI Human rights dataset 2010).

The fourth issue area, functioning market economy, was evaluated on the basis of economic freedom dataset.²³ It was the most successful area where Georgia surpassed the new member states' average of the 2004 enlargement round since 2007, and also the new member states' average of the 2007 enlargement round since 2006, and the average of the candidate states for the whole period except for 2000. In fact Georgia was labelled as the 'number one world reformer' by the World Bank and had a GDP growth forecast at almost 7 per cent for the period 2007-2012 (Kratochvil and Lippert 2007).

Out of these six indicators, which form the core of the Copenhagen Criteria, Georgia had the highest convergence levels in comparison to all three ENP states in three issues and also reaches the state of member and Balkan states in lack of corruption since 2008, human empowerment rights and economic freedom. Georgian scores were between Moldova and Ukraine for independence of judiciary, which has reduced since 2007, and in democracy which has also reduced since 2001, and human integrity rights which have remained the same as the average since 2001. The lowest score was only received out of the three states in democracy. Therefore, overall having three scores at the top level Georgia has been the most successful out of the three ENP states in fulfilling the EU criteria and especially it has been successful since 2008.

4.2.1.2 Potential Threats and Opportunities of Georgia's Integration

Despite surpassing the levels of fulfilment of the Copenhagen Criteria in comparison to Moldova and Ukraine there are issues which may limit and also support the integration potential of Georgia. In essence, Abkhazia and South Ossetia's status is making deeper integration harder both to the EU and NATO (Baramidze 2011). In addition, it is also expected that the EU remains reluctant to open the option for membership in order not to upset Russia, especially since the Georgia-Russia war (Grant and Leonard 2008). Despite this the fact that Georgia is relatively small could make it an easier country to absorb than for instance Ukraine. Finally, in comparison to Moldova, Georgia also would provide strategic importance to the EU as a transit country for oil from the Caspian Sea, instead of needing to rely on Russia or the Middle East (Chira and Verdun 2011).

²³ The dataset entails issues which form parts of functioning market economy: free interplay of market forces, free market entry and exit, macroeconomic stability, sufficiently developed financial sector and adequate legal system.

4.2.1.3 EU Support

In comparison to Moldova and Ukraine, which both have received support from a variety of sources for their membership aspiration, Georgia overall has gained less support. In the 1990s Georgia, under Shevardnadze, received little support for membership prospect from the EU. Georgia had misused funds that it had received from the EU and the US and this contributed to the West's sceptical attitude toward Georgia's promises (Omelicheva 2010). Even after the Rose Revolution, when the EU started to support Georgia's new direction and acknowledged Georgian wishes to join the EU, there has not been support toward Georgia's membership wishes by the EU institutions or member states. Only after the launch of the EaP, EU officials in principle agreed that EaP countries are eligible to apply for membership.²⁴

4.2.1.4 Domestic Perceptions of the EU Membership Prospect

Even if little support was achieved, domestic presidential rhetoric has maintained since early on that Georgia would soon enter the EU. During Shevardnadze the EU membership declarations were more of a tool to gain support when Shevardnadze was losing power rather than actually demonstrating real desire. For instance, when Georgia was still struggling with corruption and standards that would not be acceptable to the EU and when the EU was not even recognising Georgia as a purely European country, Shevardnadze in 2002 was announcing 'Everything is being prepared so that we will soon enter the European Union. That will be a great step forward, even though that may require some time - maybe a year and a half or two years'.²⁵ He also maintained 'We also have a real opportunity to join NATO' (Nodia and Pinto Scholtbach 2006).

When Saakashvili entered power after the Rose Revolution, similar rhetoric of the EU membership prospect was continued as a consequence of the Rose Revolution euphoria rather than being based on facts or shared by more than the president and the immediate elite. When Georgia was admitted to the ENP at their own request most of the officials considered the ENP 'as a springboard for subsequent EU accession, while just a few of them would have properly read the ENP documentation' (Gegeshidze 2006). Furthermore, Saakashvili announced in 2004 that Georgia would become an EU member during the tenure of the next Georgian president to be elected in 2009 (Di

²⁴ Author's interviews with an interviewee no. 43 and interviewee no. 45, Brussels, June 2011.

²⁵ Shevardnadze, E. 'Eradicating corruption is not enough to sustain a country' Interview by Babitsky, A. 2005, Available at: <http://www.rferl.org/content/article/1051300.html>.

Puppo 2008). In 2006 he had predictions of Georgia joining NATO in 2008 and the EU shortly after (Beatty 2006).

Despite this presidential rhetoric and with the population maintaining a similar view²⁶ that it should happen soon (Müller 2011; Gordon 2005) the political elite had a consensus that it is indeed unlikely even if it wants to maintain it as a long term prospect (Baramidze 2011; Gogolashvili 2009). The main reasons why the elite does not see it as possible is that they are feeling that there are many other states before them in the queue, due to enlargement fatigue and also because they are not even sure if Georgia would be ready to commit to it fully. Firstly, because Turkey has not been proceeding with negotiations it has also sent Georgia a sign that it would not be considered for membership. As Ghia Nodia expressed in 2009, the concern of enlargement fatigue and how Turkey is treated reflects to Georgians that they should not have ‘illusions about’ membership. If Turkey would enter to EU, it also ‘would make Georgia's aspirations much more realistic’ (Nodia 2009).

Secondly, the internal mismatch with the EU is likely to stop integration. The mismatch between Georgian and EU policies, which Georgians are not necessarily willing to meet, could cause insurmountable internal challenges for the membership prospect. For instance, Gogolashvili found that Georgia’s founding principle of deregulation would conflict with the ENP action plan commitments and also closer EU integration. Georgians are reluctant to set up regulatory agencies, especially in social and economic policy areas, as it reminds them about the past that they are trying to avoid.²⁷ Papava (2008) maintains that some issues related to the economics sector are not even considered to be necessary and therefore may hinder advancement with EU integration.²⁸ Thus, the key dilemma also consists of whether Georgia, despite its wishes to join the EU, would in fact be ready to change from a liberal model to a regulatory model.

As a consequence, because the likelihood of EU membership was not seen as high, Georgia has not taken EU accession as a primary goal. Rather NATO accession has

²⁶ A majority of the population expect EU accession to take place in the next few years and 93% want to join the EU according to CRRC (2009). At the same time knowledge on the EU is low as it is demonstrated in the same survey: L 32 per cent only know what the EU is and 16 per cent think that Georgia is already a member.

²⁷ Author’s interviews with and interviewee no.35 and an interviewee no. 55, Tbilisi, October 2010.

²⁸ These issues are such as labour code, food safety and phytosanitary control, quality control of industrial goods, competition rules, consumer rights and environmental rules (Papava 2008).

been the priority in the last decade. The elite sees it as a more likely option to integrate to, but also their foreign policy relations are driven by the goal of guaranteeing Georgia's security and currently NATO serves this goal best. Therefore, in regard to the EU only sectoral integration seems more likely. Prime Minister Zurab Noghaideli maintained in 2006 that Georgian's concerns about the future EU enlargement convinced them that it should pursue a free trade agreement instead of full membership. 'It is totally counterproductive to discuss with the European Commission or EU member states possible membership of the Union, totally counterproductive' he said, because 'there is a kind of enlargement fatigue in the European Union any discussion would be senseless' (Beatty 2006). Even if the rhetoric of EU integration since the Russia war increased in 2008, this view is still maintained.

In sum, the reality of membership prospect is unlikely due to the separatist areas' status, far away location from the EU and a lack of Georgia's own domestic drive towards it. Consequently, low prospect of the EU membership potential is unlikely to explain Georgia's decision to comply with the EU standards.

4.2.2 Georgia's Identification with the EU

This section argues that Georgian identification with the EU has been medium until 2002 and high ever since. Before 2002 only some groups of the elite found the EU as a group to belong to; recognised with some European values and considered themselves as European but it was not shared across the elite and overall there was no specific separation between the West and the EU in their opinion. After 2002 identification with the EU has been high because, even though the US has been the primary partner to Georgia and NATO has been the group they have aimed to integrate with, Georgia has demonstrated that its identity, values and belonging has been with the EU and not shared by other directions or the East. These arguments are explored below through data drawn on presidential, governmental and political party opinions²⁹ before discussing population identification which is analysed from population polls' data conducted by the IRI and the domestic NGOs.

4.2.2.1 Elite Identification with the EU

The first president Gamsakhurdia did not consider that Georgia belonged to the European family due to its different political system (Ditrych 2010) and neither had he viewed the West in a positive light as at the time of the separatist conflicts the West had

²⁹ See Figures 5-8 in the Appendix.

not come to the rescue and therefore little trust was vested in it (Jones 2003). Gamsakhurdia's policy had nationalist tendencies (Papava and Tokmzishvili 2006) and he considered that Georgian identity lay with pan-Caucasia (Jones 2003; Nodia 1996).

After the short lived presidency of Gamsakhurdia during which he did not have the opportunity to develop a clear foreign policy orientation (Nodia and Pinto Scholtbach 2006), Shevardnadze took office and aimed to create good relations in all directions but did not put any special emphasis on the EU specifically but rather to the West in general. He retained Gamsakhurdia's direction in viewing the Caucasus as a home for Georgia, not in a tribal sense but rather in terms of economics and security (Jones 2003). He joined the CIS in 1993, and signed the Georgia-Russian friendship treaty in 1995 (Jones 2003). He also mentioned NATO and EU integration as the main goal for foreign policies (Nodia and Pinto Scholtbach 2006).

Even though the two first presidents took no stand toward a European direction the foreign policy orientation of the Parliament, its Committees, Ministry of Foreign Affairs (MFA) and Ministry of Defence (MD) from 1994-1997 emphasised Georgia's commitment to the Western model of liberal democracy, rule of law, minority rights and a free market (Jones 2003) which were expressed in the three most important policy documents during the time: 1. 'Basic Principles of the Sustainability of Social Life, the Strengthening of State Sovereignty and Security, and the Restoration of the Territorial Integrity of Georgia' (Basic Principles) 2. The 'Georgian Military Doctrine' and 3. 'Georgian National Security Concept' (Jones 2003). None of the documents made reference to the idea of the Caucasian state and most considered Russia as an intruder at the time (Jones 2003). While this was indicating that the West was considered as the primary aspiration group to belong to, there was no particular separation of what the West meant and the EU's particular role as a part of it.

Political parties at the time did not either clearly orientate to the EU as demonstrated in the MFG datasets of the 1992 election. Only three parties out of 18 orientated to the EU (a total of 38 seats out of 225 in the parliament). Nevertheless, it was the clearest direction of the other alternatives as there were no parties demonstrating orientation either to US/Western states or Russia/CIS. In the second election in 1995 two parties out of eight had positive views on European integration (Union of Georgian Traditionalistas 'KTK' and National Democratic Party 'EDP') thus representing a more positive direction toward the EU, however, still not representing more than a small

portion of the total seats. Again other directions (East inc. Russia or CIS or West and USA) were not supported. In addition, most parties' perceptions reflected nationalist tendencies. In sum, during the first years until 1997 identification with the EU can be considered to be medium due to the mixed record at the elite level even if the EU orientation was seen as primary in terms of origins, identity and values.

Even if during his second term Shevardnadze's identification with the EU was more apparent it was not yet shared by all the elite. Shevardnadze expressed a clear orientation to the EU by expressing his wish to be included in the EU. It was not only due to benefits but also due to shared history and values which were expressed for example when Mr. Zhvania at the end of the 1990s emphasised the potential link between Georgian-Basque roots thus demonstrating a European link or that the inclusion in the Council of Europe was so important for Georgia because they considered it to demonstrate that they were a European nation. In addition to the leadership's willingness for EU integration and being recognised as European from 1999 onwards the political parties demonstrated their increased orientation toward the EU. In 1999 two parties out of four, which occupied a majority of seats in the Parliament, were pro-European and two parties also agreed with the main Western and EU values, thus, demonstrating a European orientation in terms of belonging and values in 1999. While they were demonstrating European orientation and most of them agreed with the European values two parties also demonstrated nationalist tendencies in 1999. Thus, while it demonstrates overall higher identification with the EU values than before there still was not a full orientation or identification with the EU.

The second term with high levels of identification took place when Saakashvili stepped into power after the events of the Rose Revolution and when the decision makers were replaced by EU and US educated young staff. Saakashvili and the leadership had a consensus on orientation toward the EU and NATO. The national addresses by Saakashvili were airing the same message: the president mentioned Georgia wishes to 'return to Europe' (2006, 2007, 2008, 2009, and 2010)³⁰ and referred to them as the oldest Europeans (2007) and that Europe is the most important political vector (2007). This did not however reflect its goal of becoming a member because while all the annual addresses since his election emphasised 'accession' to NATO, EU membership

³⁰ See: President of Georgia's Annual Reports. Available at: <http://www.president.gov.ge/en/PressOffice/Documents/AnnualReports>

was not mentioned as a potential goal. It instead was referenced in terms of ‘closer integration’.

At these times a clear majority of political parties were also wishing to belong to the EU and had no particular view on the West and the US and CIS/East since 2004 onwards. In addition to this, most parties also expressed support for EU and Western related values of human rights, democracy, fight against corruption and free economy. Only one party out of 8 demonstrated anymore nationalist tendencies in 2004 according to the MFG dataset. Thus, from Shevardnadze’s second term and under Saakashvili there has been a clear orientation toward the EU, support of Western values and considering Georgians as Europeans. Also, since 2008 the parliamentary seats were occupied by the political parties that were by a majority supporting European orientation (Timuş 2008).

While Georgia’s identification with the EU was high already before 2008 when it increasingly wanted to join the EU, after 2008 the EU was also seen more in terms of a security provider. Due to various events including the vacuum left due to the postponed NATO membership after the Russia-Georgia war in 2008 and also the decreasing US role in the region the EU was seen as the only option for security and territorial integrity matters (Khindasheli 2011). Thus, in sum elite identification was medium until 2002 and high ever since.

4.2.2.2 Population Identification with the EU

The population’s identification has followed a similar pattern to the elites. Whereas before 2000 orientation toward the EU was not clear, in fact the population poll data after independence demonstrated that Georgians saw that the future lay with Russia and less than a half saw the EU in positive terms, but coming closer to 2000 the majority of the population believed the future lay with the US and the EU. For instance, in 1996 public opinion polls 51 per cent of Georgians saw that the country’s future lay with Russia and only 11 per cent saw it lying with the EU (Müller 2011). From 2002 - 2011 the US has received the first position according to population perception in regard to questions of where the future lays. While the primary partner for Georgia has never been the EU, the population has always wanted to become an EU member, thus, demonstrating at least willingness to belong to it even if the primary trust is vested in the US. In addition, the positive perception has also increased in regard to the EU. In 1996 only 37 per cent had a positive perception on the EU but from 2002-2011 it has been as high as 71-91 per cent. Georgians also share a unique identity as Europeans.

This is reflected in the population polls where 54 per cent agree with a statement than ‘I am Georgian, therefore I am European’ (CRRC 2009). Even if since 2000 the main orientation and willingness to belong and identity seem to lie with the EU, the levels of identification are, however, at best medium because as de Waahl (2011) demonstrates, even if Georgians consider themselves as an ancient European civilisation it is quite different to the modern understanding of Europe. CRRC survey revealed that Georgian attitudes are very traditional toward different ethnic groups, the role of women and homosexuality. Therefore, identification with the population is considered to be low until 2002 and medium ever since.

4.2.3 Summary of EU Membership Prospect and Identification with the EU in Georgia

This section demonstrated the level of Georgian membership prospect in the EU and identification with the EU. It argued that the Georgian membership prospect has been low at all times and it has also been considered by the elite as being unlikely to happen and therefore it has not worked as an incentive for compliance in Georgia. Even if the Copenhagen Criteria have in general been more fulfilled than in Moldova and in Ukraine overall Georgia’s Europeanness was debated until 2008. Since 2008 when it was recognised as a European country by adding it to the Eastern neighbourhood initiative, which in essence recognised eligibility for EU membership, its democracy ratings have dropped, its relations with Russia deteriorated and overall awareness of the fatigue with EU and regulatory changes it would need to go through was gaining less support from the domestic actors.

Identification in Georgia has been highest of the three countries as it has clearly only been orientated towards the EU in terms of identity, values and belonging since 2002, before which the Caucasus was also referred to a home to belong to. Even if the EU has been important ever since 2002, the US and NATO were always seen as the primary relations in order to provide security. Just after 2008 has the willingness to integrate to the EU increased because even if the EU had previously represented values and identity, since then it was also considered in terms of security. In comparison to Moldova and Ukraine, which demonstrate more orientation toward the EU due to benefits, Georgian orientation toward the EU primarily is motivated by the EU as value and norms provider. Therefore, identification with the EU can offer more of an explanatory factor than an EU membership prospect as in studying compliance in combination with the issues specific conditions in chapter five.

4.3 Strength of the EU Membership Prospect and Identification with the EU in Moldova

Moldova became for the first time independent in 1991 within the current borders. Having been part of Tsarist Russia, Romania and the Soviet Union, not surprisingly these roots have left traces in its perception and relationship with the EU. Moldova has since early on expected to be admitted to the EU despite its poor reform record. Even if geographically European, Moldova has never exclusively considered Europe and the EU as its aspiration group to belong to due to identity or values. In fact the results on the identification with the EU demonstrate that from independence to date the leading elite still equally shares belonging and identity with Russia even if from their value base point of view they consider themselves as being European. This section argues that the strength of the EU membership prospect was medium until 2009 and high since then and that the ambiguity of the EU membership prospect has worked as an incentive. Identification with the EU has been medium at all times, belonging being split between the EU and Russia both at elite and population levels.

4.3.1 The Strength of the EU Membership Prospect in Moldova

4.3.1.1 Fulfilment of Europeaness and the Copenhagen Criteria

Moldova's Europeaness stems from its geographical location and having been part of Romania sharing its history, language and European tradition. Unlike Georgia, Moldova has always been considered as a European country (Lupu 2010) even if until 1998 it was cooperating with the EU less due to the elite's eastward orientation (Danii and Mascauteanu 2011).

In regard to fulfilment of the political and economic standards of the Copenhagen Criteria, Moldova's scores demonstrate that besides a difficult beginning, since 2000 it has higher scores than Ukraine but worse than Georgia. Firstly, Moldova scores out of the three countries the lowest in the area of democracy apart from 2001 and 2002 until 2011. Secondly, within the human rights standards, integrity rights had the highest score out of the three states and the Moldovan score for empowerment rights are between the Georgian and Ukrainian scores. Thirdly, the rule of law, formed of corruption and independence of judiciary indicators, is between Georgia and Ukraine but the scores demonstrate that independence of the judiciary is the highest in Moldova. Fourthly, the economic freedom rates have been improving in the last few years and have even reached Macedonian and Romanian average scores in some years (See Figures 1-4 in

the Appendix). Moldova's WTO membership since 2001 has especially helped it to integrate into the world economy and with the EU (Lentine 2011). In sum, out of all the indicators utilised for assessment two areas have scored fully or partially highest out the three ENP states and therefore in comparison to the other ENP states overall Moldova comes second after Georgia in the fulfilment of the Copenhagen Criteria.

4.2.1.2 Potential Threats and Opportunities of Moldova's Integration

Apart from the rather low levels of Copenhagen Criteria fulfilment, the main issue which could keep Moldova from the EU is the secessionist area Transnistria (Phinnemore 2006). Nevertheless, contrary to the Georgian situation the Transnistrian conflict could not be seen as threatening to the EU's security as it has not seen outbursts since the brief war in 1992. Furthermore, the latest developments also provide hope for a solution when Russia promised in March 2011 to take out Cold War-era arms dumps which are seen as having a great impact on the potential for a resolution (Rettman 2011). In comparison to Georgia and Ukraine the relationship with Russia would be unlikely to cause problems for integration to the EU.³¹ Thus, overall Moldova is posing the least threat out of the three and also the fact that it is small in size should therefore mean it could be more easily absorbed into the EU.³²

Despite little potential threats to the EU from accession, it also has little to provide for the EU.³³ Moldova has been known as the poorest country in Europe whose survival has been based to a large extent on its ability to receive foreign remittances (Chira and Verdun 2011). The only industry that Moldova could contribute to is the wine industry, which is not something it could compete with in the European market.³⁴ In addition, it holds little strategic importance in comparison to Ukraine or Georgia, having no position in regard to energy transit routes. The only contribution would thus be to demonstrate the EU's power as the EU needs to have a success story in the neighbourhood: as they almost lost Ukraine, Moldova may have an opportunity for future membership.³⁵

³¹ Author's interview with an interviewee no. 30, Brussels, June 2011 and with an interviewee no. 4, Chisinau, June 2010.

³² Author's interview with an interviewee no. 4, Chisinau, June 2010.

³³ Author's interview with an interviewee no. 32 and with an interviewee no. 62, Chisinau, June 2010.

³⁴ Author's interview with an interviewee no. 32 and with an interviewee no. 62, Chisinau, June 2010.

³⁵ Author's interview with an interviewee no.4, Chisinau, June 2010.

4.2.1.3 EU Support

Moldova has received much more support from the EU than Georgia but only recently has it become the EU's new favourite role model; before 2009 Ukraine was seen as the 'best pupil'.³⁶ As early as 2003 Mr. Verheughen maintained, when talking about Moldova and Ukraine in regard to membership, that 'it is true that the door cannot remain closed in the long term' (RFE/RL Newslines 15/04/2003). While recognising Moldova's Europeaness and, thus, the potential for accession in principle the official view in the Commission has been that because of Moldova's low levels of reform, cooperation is needed to focus on the PCA and the ENP. When the new government took office and Ukraine had at the same time lost the enthusiasm which was present during the Orange Revolution, the EU's attention seemed to focus on Moldova's aspiration for membership.³⁷ Interviews with the Commission officials also confirmed that the question of membership of Moldova depends on itself and that even if the EU is not in the position of enlarging due to its own situation at the moment, it supports Moldova anyway toward it. A representative of the delegation commented 'It will come if it is necessary. Moldovans know it and Association Agreement is a sign of relations getting closer'.³⁸

In addition to increasing support from the Commission, Moldova has gained support from some member states and the European Parliament for its integration wishes. Romania has been especially a committed supporter of Moldova's accession to the EU. After the election of Traian Basescu for Romanian president in 2004 he promised to serve as a Moldovan 'advocate' within the EU after Romania's entry in 2007 (Lupu 2010). 'When Romania enters the EU, hopefully on 1 January 2007, this will open new possibilities for Moldova' Eugen Carpov said (Rettmann 2006). In addition, the Parliamentary Committee representative and the Chair for Moldova in the European Parliament maintained that there is willingness to support Moldova in acceding to the EU as it deserves it and now it is finally fully committed the Committee will support its preparation.³⁹ This attitude also got at least symbolic meaning when the amendments in the Association Agreement draft were made on 16.07.2011 according to Moldova's requests to include the potential of membership (Horborowski 2011). The first point of the resolution read: the European perspective including article 49 of the EU treaty,

³⁶ Author's interview with an interviewee no. 65, Kiev, December 2009.

³⁷ Author's interview with an interviewee no. 65, Kiev, December 2009

³⁸ Author's interview with an interviewee no. 13, Chisinau, June 2010.

³⁹ Author's interview with an interviewee no. 43, Brussels, June 2011.

regarding EU membership, 'is a driving force of the reforms and a catalyst for the social support for them' (Horborowski 2011). Thus, before the new Moldovan government the EU did not give much encouraging signs of supporting the potential for EU membership due to Moldova's lack of reform. It has been evident ever since that the Commission, Parliament and some member states have given support for Moldova's EU aspirations.

4.2.1.4 Domestic Perceptions of the EU Membership Prospect

Moldova's elite has been hopeful of the prospect of EU accession from the mid-1990s onwards, first due to Moldova's Europeaness and later on due to being included in the Stability Pact and the Council of Europe as one of the first countries. After 2001, even if expectations were never totally put aside due to Moldova's eligible position as a European country, expectations of Moldova's accession to the EU were not driven during the Communist government's rule due to their overall reluctance to take on the required reform. Only after 2009 and the new government have membership expectations been high as it has been expected that the new government is able to deliver the change.

Soon after independence expectations emerged about Moldova's potential to become a candidate country. These expectations were demonstrated when the second president of Moldova Mr. Luchinschi and the elite around him raised the membership question for the first time as a strategic goal during his term from 1997-2001 and took steps, such as becoming involved in the negotiation of the central European initiative and arranging participation in the Southeast European cooperation process and the Stability Pact for South-Eastern Europe. These cooperation arrangements culminated in the expectations of Moldova being on the list of candidate countries in 1999 (Skvortova 2006). When Moldova did not appear within the six countries to which the EU decided to open accession negotiations with during the 1999 Helsinki summit, the decision shocked Moldova. Moldova, nevertheless, did not bury expectations for its EU membership prospect. The Minister of Foreign Affairs Nicolae Tabacaru responded with 'We believe that Brussels and the countries - EU members cannot postpone the answer we are waiting for any longer' (Skvortova 2006). Indeed Moldova demonstrated that it still was pursuing the membership through circulating 'The Strategy of the Republic of Moldova for Association with the EU' and then passing it to a Ministry discussion in April 2000 (Skvortova 2006). It consisted of the issues that were necessary to be undertaken in order to come closer to the EU standards in the area of economic and legal reform. It

outlined participation in the regional and sub-regional bodies and cooperation with the South-Eastern European countries as objectives (Skvortova 2006).

When Voronin and the Communist government took office in 2001 the expectations of membership taking place in the immediate future diminished when it became clear that Moldova's Europeaness was not enough to guarantee membership but more reform was needed and this reform was not likely to be taken when Voronin turned policy eastwards. It was just in 2005 when the EU membership question came back on the agenda and Moldova's policy turned toward the west again following Russian isolation and the realisation of not being able to survive on its own. At that time even Voronin was, at least in rhetoric, expressing the goal of EU membership and expectations that it will take place 'one day' (Botan 2008). This 'one day', according to Voronin, was when conditions are ripe: Transnistrian problem and corruption have been eliminated (RFE/RL News 04/02/2003). Despite this the Communist government was ineffective at committing to reforms and the EU membership prospect was not expected to materialise during their leadership.⁴⁰

From 2009 onwards the membership prospect has been more connected to the belief that Moldova's new government is committed and capable of delivering the reform. Consequently, a consensus in Moldova has been emerging on that Moldova will be soon ready for EU membership. The time since 2009 has stopped 'stagnation' of the Communist Party which was not interested in working efficiently toward European integration as the reform laws actually challenged their power base⁴¹ and has been replaced by pro-European orientation in the leadership and with new personnel committed to change.⁴² It is no longer a question of whether or not, but only when experts commented.⁴³ Even though the EU was in the midst of enlargement fatigue and being beset with economic crises, the elite was committed to change and maintained that there is no need to talk about the time⁴⁴ but it will commit to reform until it is ready as it knows that it has a right for membership due to its Europeaness. 'We do not care about the talk whether we will enter the EU or not, in our opinion we will enter the European Union, that is why we do not need to have a European perspective to move

⁴⁰ Author's interview with an interviewee no. 54 and an interviewee no. 4, Chisinau, June 2010.

⁴¹ Author's interview with an interviewee no. 54 and with an interviewee no. 14, Chisinau, June 2010.

⁴² Author's interview with an interviewee no. 13 and an interviewee no. 4, Chisinau, June 2010.

⁴³ Author's interview with an interviewee no. 13, Chisinau, June 2010.

⁴⁴ Author's interview with an interviewee no. 23, Chisinau, June 2010.

on'.⁴⁵ The difference with the new government is that instead of waiting for a clear cut opportunity for membership they act like it already has an opportunity for membership.⁴⁶

In sum, out of the three countries Moldova has the highest potential currently for membership. It has also worked as an incentive to drive Moldova's change to some extent from 2005 to 2009 and increasingly so from 2009 onwards because Moldova has, despite the weak initial conditions, believed that membership will take place one day.

4.3.2 Moldova's Identification with the EU

This section demonstrates that Moldovan identification with the EU at the elite level and population level has been medium at all times. The reason is that the presidents, the governments and the political parties demonstrated no belonging to the EU before 1998 but equally preferred Russia as an aspiration group. Nevertheless, overall the majority of the parties simultaneously agreed with the western values. Only after 2005 a more emphasis on belonging to the EU appeared at all levels but it has been mainly to do with isolation from Russia, economic crises and a realisation of not being able to survive without the EU rather than identification. At the population level the questions of identification and values demonstrate especially a drive towards benefits rather than the importance of identity or values. These arguments are explored below through data drawn on presidential, governmental and political party opinions before discussing population identification which rely data from population polls conducted by IRI and the domestic NGOs. In sum, the argument that this part makes is that identification with the EU has not become a major question in Moldova. Its foreign policy has been mostly based on the search for economic survival. Therefore, overall the identification with the EU has not been a decisive question to a large extent with its motivation to comply with the EU standards. As an expert summed it up: 'Moldova's orientation and identification changes even depending on whether it is winter or summer or whether it needs energy or democracy'.⁴⁷

4.3.2.1 Elite Identification with the EU

The first two presidents after independence did not emphasise any belonging toward the EU but the goal was to establish the future status of Moldova. The first president Snegur was concerned about the potential of Moldova's unification with Romania and just in

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Author's interview with an interviewee no. 23, Chisinau, June 2010.

late 1993 President Snegur was prompted to clarify Moldova's relations to the EU for the first time when CEECs in the neighborhood were included into the PCA (Ghregoriu 1998). His purpose in demonstrating support for European integration was more to do with the fact that in order to maintain his popularity Snegur had to tone down his pan-Romanist rhetoric. In addition, he also added nationalist rhetoric in 1996 to his politics (Crowther and Josanu 2004).

The second president did not demonstrate clear belonging to the EU as he simultaneously drove CIS trade zone accession even if he pledged to belong to the EU (Vițu 2004; March 2007:604). These two goals would not have been possible to achieve as inclusion of only one trade zone is possible, thus, there was no clear orientation belonging with the EU either by Lucinschi. Overall the main reason for both Presidents' orientation toward the EU was a perception that Moldova could not overcome economic and social difficulties or conflict without assistance from the West (Skortova 2006) and therefore orientation toward the EU was benefit driven.

When Voronin became president he announced that his national interests lay especially in Russia and the CIS (Vițu 2004:34). His early statements included a clear message: Moldova 'must resist in the face of Europe just as Cuba resists in the face of the US' (Vițu 2004:36). His actions also demonstrated his orientation. Voronin met Putin nine times within the year from April 2001 to summer 2002. By 2002 he omitted EU membership as a priority from their agenda (Kuzio 2006a; Mosneaga 2007) and also dialogue with the EU had turned sporadic (Kuzio 2006a). Furthermore, there were proposals to have new school history courses, making Russian a second official language and revision of the privatisation process (Kuzio 2006a; Mosneaga 2007). He drove a strong Russian orientated policy and there was little interest in EU integration and neither was he intending to focus on reform aspects important in regard to European integration. It was clear that he did not want to worsen relations with Russia at the expense of getting closer to the EU as he saw that Russia after all was 'in Moldova's genetic code' (Weiner 2006). Moreover, Voronin stressed that Russia remained one of Moldova's 'strategic partners' (Weiner 2006).

Besides the presidents, the governmental data demonstrated that there was no particular orientation or belonging to the EU before 2005. The EU did not feature either as a family or place to belong to among the government perception in the 1990s. The first three Moldovan government action plans under Mr. Druc, V. Murcsci and Sangheli

until April 1994 did not include any reference related to EU integration (Mosneaga 2007).

During Sangheli's second term as prime minister during April 1994 - January 1997, the national action plan only mentioned EU integration on one line (Mosneaga 2007). The next government under I.Ciubuc (January 1997 – May 1998) also did not refer to the EU in their action plan. Thus, it was just under his second government and action plan between May 1998 – March 1999 when for the first time an interest in joining the EU was formally expressed (Mosneaga 2007). However, this was short lived as when the government of Braghiș from December 1999-March 2001 formed by left centrist parties emerged, Moldova took an eastern orientation.

Also, political parties according to the MFG dataset results (See Figures 5-8 in the Appendix) demonstrate that during the 1990s more political parties preferred the eastern orientation than the EU until early 2000. After independence in 1994 only one out of four parties in the parliament was orientated to the EU according to MFG results while three parties oriented toward Russia. However, at the same time three out of four parties supported all EU/western related values in the MFG datasets and no nationalist tendencies were in place. In 1998 two out of four parties were pro-European but they occupied a minority of the seats in the parliament. Furthermore, still in 2001, all parties preferred Russia as an orientation as but only two parties out of three supported the EU orientation. Thus, until 2004 and Voronin's first term a clear EU orientation had not taken place at the presidential level and the political parties had not set a clear prioritisation toward the EU even if they identified with EU/Western values.

From 2005 until 2009 the relations with the EU grew closer. However, it was not related to identification and considering the EU as an aspiration group due to shared identity or values but more seeing the EU in terms of benefits. Coming closer to the second term Voronin at least had toned down his Russian orientation and was also emphasising European integration. He maintained that the policy was not only a process of returning to European culture and civilization but also a process of adjusting to the European politic-economic standards and norms (Moldova Suverană 18/04/2003).

This increased orientation toward the EU was reflected in 'Orientation to European Integration as a Strategic Guideline for the Country' adopted by parliament (Mosneaga 2007). However, because the change was taking place in conjunction with the financial

crisis it demonstrates that it had little to do with identification or finding the EU as a home for Moldova rather than based purely on survival. This was demonstrated by the fact that the CIS integration was until 2009 still on Voronin's agenda (Infotag News 27/07/2009).

During Voronin's second term, the political party view already had started to reflect the EU as a primary orientation. Firstly, three main parties were pro-EU and only two out of three remaining were pro-Russian. Secondly, the main political parties PLMD, Liberal Party, Our Moldova Alliance and Democratic Party of Moldova contrary to Voronin shared the view of European integration being the primary policy goal (Grau 2010). Despite this the Communist Party's true commitment was lacking and it was mainly used as a tool for gaining popularity in the election rather than reflecting true commitment for the European direction, therefore, identification with the EU until the new government was low.

The third term representing a change of Moldova's foreign policy started when in 2009 the new government put the Communists into opposition by forming a coalition between four parties named 'Alliance for European Integration'. It took Moldova to a new level of enthusiasm for EU integration as all parts of the elite had recognised EU integration as one of their priorities (Dura 2009). It marked a change by clearly clarifying that foreign policy is not any more 'pro-Russia or pro-Europe but pro-Europe and how'.⁴⁸ The elite were replaced by new young educated officials and pro-Western previous NGO representatives.⁴⁹ The final Government action plan in 2011 demonstrated a clear commitment for integration but also the motivation based on accession benefits: 'The coherent implementation of policies designed to socially, politically and economically "Europeanize" the country and an Association Agreement with the European Union will enable the Republic of Moldova to become, in a reasonable time, eligible for EU accession' (Government of Moldova 2011).

Besides the government's and interim presidents' enthusiasm toward EU integration, political parties' preference toward the EU was not obvious. In 2009 all parties' orientation was equally divided between the EU, Russia and the US in the MFG datasets and even if the majority demonstrated positive attitude to the Western values and no nationalist tendencies were present, no preference toward EU as the primary orientation

⁴⁸ Author's interview with an interviewee no. 11, Chisinau, June 2010.

⁴⁹ Author's interview with an interviewee no. 23, Chisinau, June 2010.

was demonstrated. Also, as the enthusiasm toward the EU since 2009 has been primarily due to high expectations of the membership accession, identification with the EU can be considered medium at all times.

4.3.2.2 Population Identification with the EU

Population identification with the EU has been at medium levels at all times. Even if EU membership support has received high scores, other results reflect that the population considers Russia as the primary partner and it sees the EU primarily in terms of economic benefits and only a small portion consider themselves as Europeans by identity. The population poll results (see Figure 9 in the Appendix) demonstrate that Moldova has considered Russia as a primary partner at all times even if the factor of viewing it as a threat has also increased with time. Despite this, as in the case of Georgia, the support for EU membership has been very high. The percentage of support has been around 70 per cent at all times. However, overall identification among the population is not as high as in Georgia as even if a majority of people want to join the EU at the same time the CIS has also received high support. The slightly higher orientation toward the EU in the last few years does not reflect the belonging based on shared values and identity but rather benefits. For instance, the 2009 ENPI population poll found that EU integration was considered, by a majority of the population, to be important because of economic benefits. Just the second and third motivations for integration were human rights and democracy. In addition, only 9 per cent of the population often identified themselves as Europeans, and 25 per cent of the population sometimes considered themselves as Europeans, whereas 56 per cent saw themselves as rarely or never Europeans. Finally, Russia was continuously seen more positively by the population. For instance, in 2008 population polls Russia was viewed positively by 68 per cent of the people, Ukraine 62 per cent and the EU received just the third highest score of 61 per cent positivity. Thus, the results demonstrate that Russia was the primary direction to belong to and the EU belongingness was driven primarily from a benefit point of view.

4.3.3 Summary of EU Membership Prospect and Identification with the EU in Moldova

The strength of EU membership prospect in Moldova was at medium levels throughout its history until 2009 since when it has been high. Even if it has not fulfilled all of the expected criteria and has suffered from the separatist Transnistrian region Moldova has not stopped believing that the EU membership will take place sooner or later, which has

thus worked as an incentive for EU integration. The reason for Moldova's high expectations for its EU membership has varied but in the beginning it was related to its Europeaness and that it was the first member of the Council of Europe out of the Newly Independent States (NIS) and also that it was included in the Stability Pact, which at the same time only otherwise included countries which were considered as potential candidates. Until 2009, because of the poor reform record and the inefficient Communist government, the EU membership prospect was reduced due to the government's inability to carry out reform even if it was still a long term goal and can therefore be coded as medium. Just when the new government emerged indicating a new commitment for reform in 2009 has the membership expectations been high.

In regard to identification with the EU, Moldova's perception has been mixed because even if it has become more European orientated, this development has been due to expectations of benefits related to EU membership rather than it considering the EU any more as a 'family' or an aspiration group to belong to. To a large extent loyalty lies with Russia and the Russian church and has still a major hold on the society.⁵⁰ From independence until 2005 orientation was emphasising Russia and the CIS without creating any priority toward the EU even if the European/Western values were agreed to be shared by a majority of parties. From 2005, even if integration to the EU was more emphasised, simultaneously it was portrayed from the perspective of necessity of economic survival rather than in terms of returning to Europe and considering it as an aspiration group. Even if the new government organised under the 'Alliance for European Integration' has voiced its commitment to make the EU a primary partner, the orientation is only related to the willingness for EU membership demonstrated in that all parties still mention Russia equally as their preferred orientation and therefore identification with the EU can be coded medium. Population opinions demonstrate less orientation to the EU and have seen the East and Russia historically as the primary partner; the EU has been viewed mostly in terms of benefits and only a small portion of the population identifies themselves as Europeans. Bogutcaia et al. (2010) argue that in the light of changing political orientation the Moldovan elite reflect more pragmatism than commitment to shared European values. Overall, at the macro level the EU membership prospect in Moldova has more explanatory value in explaining compliance than identification with the EU.

⁵⁰ Author's interview with an interviewee no. 11 and an interviewee no. 62, Chisinau, June 2010.

4.4 Strength of the EU Membership Prospect and Identification with the EU in Ukraine

Ukraine, as a large and strategically important country, has had a rather different attitude towards EU membership and also identification with the EU in comparison to either Georgia or Moldova. While Ukraine expressed its interest toward EU membership early in the 1990s when its bids were repeatedly denied Ukraine came to a conclusion that there is little point of taking expensive changes unless there is an end goal to pursue.

Identification with the EU has varied more than in other countries due to its East-West split, its large size and its important strategic role in Europe. Ukraine demonstrates in its approach that it does not find it necessary to have an aspiration group to belong to but prefers to be a power in its own right. After independence Ukraine was taking a step away from Russia's influence by aiming for the creation of relations with the West and the EU through emphasising its orientation and will to return to Europe. However, when the membership prospect was looking bleak for Ukraine, its European roots, history and values seemed to be less emphasised and also found a home in the East. The population view had always been split between the EU and Russia but since the peak in orientation toward the EU in 2006 support has reduced in terms of willingness for integration, perception of the EU as the primary partner and seeing the EU in positive terms. Thus, identification with the EU has not been exclusive at any time.

4.4.1 The Strength of the EU Membership Prospect in Ukraine

4.4.1.1 Fulfilment of Europeaness and the Copenhagen Criteria

Ukrainians have themselves perceived that their country is culturally, historically and geographically part of Europe and therefore has a natural right for membership (Kuzio 2005a). Even if geographically Ukraine has been considered as European, until the Orange Revolution the EU did not see it as culturally European, due to the neo-Soviet political culture (Kuzio 2005a). In addition to the unclear question of Europeaness until the Orange Revolution, the prospect of EU membership has not been promising according to fulfilment of the Copenhagen Criteria, apart from a democracy score after 2005.

The ratings overall have been the lowest out of the three ENP states (See Figures 1-4 in the Appendix). Firstly, only the democracy rating has been the highest of the ENP states, however, it has not reached the levels of the new member states or candidate

states. The highest democracy rating was achieved from 2005 until 2010, but in 2011 it scored lower. Secondly, the rule of law rating was the lowest, both in the indicators of corruption and independence of judiciary. There has been very little change in the corruption score despite a slight peak between 2005 and 2008. The independence of judiciary has received the lowest scores from 2005 until 2009. Thirdly, the human rights score is together with Georgia below the Moldovan score in integrity rights and in the empowerment rights it is the lowest of the three ENP states. In none of the ratings did it reach the levels of new member states or candidacy states except for the new Eastern member states' level in 2007, in 2001-2002 and 2006 in the integrity rights. Fourthly, Ukraine also scores the lowest of the ENP states, candidacy states and member states in the economic freedom dataset. Overall, Ukraine's score is the lowest out of the three states having only one issue area with the highest score.

4.4.1.2 Potential Threats and Opportunities of Ukraine's Integration

Despite Ukraine's poor reform in other areas except for democracy, the questions of other limitations for Ukraine's accession mainly concerned Ukraine-Russia relations if Ukraine was to accede. For instance some analysts have suggested that gas disputes in 2008 were sparked due to the EU and Ukraine relationship getting closer (Watson 2009).

Despite this, in many other aspects Ukraine has a better opportunity for accession. First of all, Ukraine does not have to deal with separatist areas in its territory which hold membership potential at bay for Moldova and Georgia. Secondly, while on the one hand Ukraine's large size could pose a potential obstacle for the EU to accept Ukraine (Stent 2007) especially taking into consideration that the East and West have very different levels of pro-Europeaness (Radyuhin 2010) on the other hand its large size could also be seen as a positive factor for agricultural opportunities (Emerson 2006) or as a source of work force which the EU will need in the future.⁵¹

4.4.1.3 EU Support

Ukraine has received more support from the EU and member states toward its EU accession. As in the case of Moldova, Ukraine has been viewed as a potential EU member state by some European states, Commission representatives and the European Parliament, especially during the time of the Orange Revolution.

⁵¹ Author's interview with an interviewee no. 65, December 2009.

After independence there was only a little support for Ukraine's accession to the EU (Molchnakov 2004). Ukraine was seen merely as a 'Soviet heir' and there were concerns over Ukraine's commitment to carry out Soviet obligations rather than seeing it as a country on its own merits. However, at the time of Orange Revolution Ukraine gained positive attention from the European institutions and member states in regard to its demonstration of democratic standards and willingness for reform.

While the official opinion by the European Commission to Kiev has been that before it could be considered by the EU for membership it should 'work to get its own house in order' (Belmege and Paul 2011), the European Parliament has suggested that Ukraine's aspiration should be acknowledged. For the first time the European Parliament acknowledged Ukraine's bids for consideration as a potential candidate already in 2001 by suggesting that the Council should take it into consideration. More recently in 2009 and 2011 it published resolutions supporting the recognition of Ukraine as a potential candidate. In 2009 the Parliament resolution was seen as symbolic encouragement for Ukraine. Most recently, on 1st December 2011, the European Parliament adopted a motion which agreed 'to recognise Ukraine's aspirations pursuant to Article 49 of the Treaty on the European Union, provided that all criteria, including respect for the principles of democracy, human rights, fundamental freedoms and the rule of law, are met' (European Parliament 2011).

Furthermore Ukraine has been seen by the member states and the EU population as one of the most preferred potential candidates. Ever since 2000, in the elite polls Ukraine was preferred as a potential new member state over the current candidate states of Turkey or Croatia. TNS Sofers poll⁵² demonstrated that 77 per cent in Poland supported Ukrainian accession, 49 per cent in the UK and 58 per cent in France. The support for Ukrainian accession to the EU was higher than for Turkey also among the EU population level (Eurobarometer 2006).

4.4.1.4 Domestic Perceptions of the EU Membership Prospect

Ukraine has a very different attitude to EU membership in comparison to Moldova or Georgia. It is aware of its strategic importance to the EU and has not accepted its treatment as the EU's 'little brother' but wishes to be treated as an equal partner.⁵³ Its

⁵² TNS Sofres poll available at: <http://www.yes-ukraine.org/en/survey/november.htm>.

⁵³ Author's interview with an interviewee no. 65, Kiev, December 2009 and an interviewee no 22, Brussels, June 2011.

expectations of EU membership as a natural right became weary during the mid-1990s when Ukraine's bids to be considered as a candidate were repeatedly ignored by the EU and culminated by late 2011 in a situation where it is not sure if expensive changes required will be possible to be taken without a certain membership prospect. While the membership prospect has been medium for the whole time, the ambiguity of the membership prospect has only worked as an incentive during the years of the Orange Revolution and therefore has been from 1991-2002 low/medium, from 2002-2007 high and since then medium.

During the 1990s Kuchma's bids for EU membership were repeatedly rejected and it became evident for Ukraine that they would need more reform if they wanted to have a potential for EU membership. When Kuchma took over a clear orientation was set for the first time with EU membership as the 'primary foreign policy goal' by the government in 1996 (Kubiček 2003c: 156). Soon after however it was clear that Ukraine's hopes were short-lived when they were not able to make it into the group of countries that were envisaged as the potential candidates during the Luxembourg European Council of 1997 or the Tampere meeting in 1998 (Light *et al.* 2000: 86). While not yet giving up hope, Kuchma during his second term in 2002, also created the State Council for European and Euro-Atlantic Integration,⁵⁴ which aimed to increase intergovernmental coordination in the area of implementing reforms required for EU membership (Wolczuk 2007). On 31 May 2002 he also presented to the Verkhovna Rada 'European Choice – Strategy' (Conceptual Grounds of the Strategy of Economic and Social Development of Ukraine for 2002-2011) in his annual address which included a timetable for accession to the EU by 2011 (Haran 2002). Nevertheless, these expectations were not supported by the EU. It was frustrating for Ukraine as it had its democracy and market economy conditions in a better shape than Romania and Bulgaria in the 1990s (Kuzio 2009: 352). Consequently, Kuchma soon pointed out that Ukraine would not be begging for the EU's acceptance and that it would not ever be interested if the EU would grant them the prospect (Kuzio 2006a).

For many the Orange Revolution meant a new impetus and represented Ukraine's credentials as a democratic country and due to its remarkable changes from previous reform levels, Ukraine was expected to have good prospect for EU membership. At that

⁵⁴ This was despite the fact that, according to article 85.5 of the 1996 Ukrainian Constitution, the parliament (Verkhovna Rada) 'determines the principles of domestic and foreign policy' (Wolczuk 2007).

time widespread optimism took over in Ukraine that speed of reforms would open the EU's doors (Kuzio 2006b). As a consequence of the EU and particularly Polish and Lithuanian attention, sympathy and respect towards Ukraine's rapid political and economic reforms, encouraged Ukraine to expect a sign of a possible candidacy status for membership (Bretharon and Vogler 2006: 153).

Since 2005, Yushchenko straight away declared EU membership as his goal and membership was seen as a realistic aspiration because of the changes already taken and the ambitious reform plan. For instance, Yushchenko explained in his speech in 2005 as a part of an annual address to the Verkhovna Rada: 'If the authorities work hard and persistently, if they are supported by the whole population, and if the intra- EU developments are positive, this aim can realistically be reached within a medium term' (Derhachov 2007). Yushchenko further commented that his reforms will be real and once they are implemented 'Ukraine will have changed so much that the EU itself would ask, why you, such a fantastic place, are not yet in the European Union?' (Kuzio 2006b). Yushchenko began a set of reforms that reflected Ukraine as a would-be EU candidate preparing for the accession process (Wichmann 2007). He outlined a four-point plan for Ukraine to move towards accession to the EU: Ukraine to be acknowledged as a market economy, that it joins the WTO, that it becomes an associate member of the EU and that it ultimately becomes a full member.

Following the Orange Revolution and the subsequent political standstill combined with a disappointing ENP as a framework for reform, expectations of EU membership diminished. By 2007 and after a couple of years of fighting among the political leadership, it became apparent that in a political environment where decision making had become impossible, there was little potential for EU membership. The political elite were describing that the Orange Revolution's momentum had been lost.⁵⁵ In addition, the population lost the trust in the leadership and also simultaneously belief in the prospect of becoming an EU member state.

Since then Ukraine has been insisting that it needs to have a membership incentive before it can afford to undertake expensive changes that the EU expects, while the EU expects change before it could consider Ukraine as a potential candidate. After the EaP Yushchenko maintained that 'he had not abandoned hope Ukraine could eventually join

⁵⁵ Author's interview with an interviewee no. 65 and an interviewee no. 23, Kiev, December 2009.

the EU' (Barber 2008). Nevertheless he did not want EaP to be an alternative for membership and acknowledged that it may 'slow down the efforts by the states like Ukraine to enter' (Trend news 24/03/2009).

When the least pro-European candidate, Yanukovich was elected as a president in 2010, it was expected to be a stop any EU membership expectations. Contrary to expectations Yanukovich has kept EU accession on the agenda. Indeed during the Association Agreement negotiations the elite has tried to push the EU to include a promise of recognising that Ukraine could be recognised as a potential candidate.⁵⁶ Yanukovich has also described the Association Agreement 'as it is not only a paper document but a key instrument towards achieving Ukraine's "goal" of one day joining the EU' (Banks 2011). Yanukovich maintained that Ukraine will be in the EU in 10 years: 'We know what to do, and know how to achieve this' (Kiev Post 19/08/2011). However, still at the end of 2011 it was not ratified because of Ukraine's reluctance to commit to legal reforms, exemplified with the imprisonment of former Prime Minister Yulia Tymoshenko according to Commission officials (Euractiv News 2011b).

Overall, contrary to Yushenko's reaction to the lack of membership prospect who was claiming to continue reform until the EU cannot say 'no', Yanukovich seems to think there is no point in taking difficult regulatory commitments when there is no end goal in sight. Yanukovich has demonstrated that he wants to have a clear answer to the EU membership potential. For instance, when the EU set requirements on 22 November 2010 for visa free travel being conditional on democratic reforms and improvements, Yanukovich said that it was not enough and Ukraine wanted to be given clear hopes of joining the EU and also Association Agreement should be reflecting this (Euractiv News 23/11/2010). Therefore, the high EU membership prospect can be seen as a potential explanatory factor for the reform between 2002-2007 and less so before and after.

4.4.2 Ukraine's Identification with the EU

Ukraine's identification has been split between the East and West. While the elite has orientated toward the Western direction during the years of the Orange Revolution Ukraine has always considered at the same time how its actions influence Russian perception on them. The population perception has varied on where the roots lie and is

⁵⁶ Author's interviews with an interviewee no.22 and an interviewee no.63, Brussels, June 2011.

differentiated between Russian speaking East and the Western and pro-European parts of Ukraine. Thus, Ukraine's identification with the EU has been changing according to the same timelines as the membership prospect; it has been low until 2002, medium until 2007 and low since then. Russia was the preferred foreign policy orientation or at least received equal support together with the EU until the Orange Revolution.

During the Orange Revolution the references of belonging to the European family emerged and overall the EU was seen as 'a faraway miracle associated with good, democracy, human rights and liberal values' and representing anything of higher standards⁵⁷. However, when the reform did not follow the expected plan, much due to the political standstill and fighting in the leadership, EU support was diminishing both at the elite and population level. The elite was not satisfied that the EU did not give a clear membership prospect and that Ukraine had to continue cooperation through the ENP which was seen as creating more of a buffer zone than an integration tool. This, as well as the increased understanding of the EU and its complex structures and bureaucracy was also creating some euro-scepticism among the Ukrainian elite.⁵⁸ Population level support for the EU has been diminishing consistently since 2005 to date.

4.4.2.1 Elite Identification with the EU

The first phase of low levels of identification with the EU took place from independence until 2002 when neither the president, leading elite, government nor the political parties found the EU as an aspiration group to belong to and their references to joining the EU were not rising from European common values and identity but rather orientation was driven by potential benefits and to gain more independence from Russia.

The presidents Kravchuk and Kuchma expressed their interest in joining the EU, however, Kravchuk was using the EU as an orientation to take a break from Russia's influence (Kuzio *et al* 1999) and at the same time he was creating closer relations to the CIS and therefore the EU orientation was more to counterbalance Russia's influence.

In 1994 Kuchma guaranteed his victory after years of poor economic reform with his campaign for economic reform, closer Russian relations and a fight against corruption (Elliott and Kolomayets 1994). While he was especially appealing to pro-Russian sentiments in Eastern Ukraine he was also maintaining Euro-Atlantic integration as a

⁵⁷ Author's interview with an interviewee no. 65, Kiev, December 2009.

⁵⁸ Author's interview with an interviewee no. 65, Kiev, December 2009.

long term goal which gained leverage for votes against Medvedchuk who lacked any interest in Euro-Atlantic integration (Kuzio 2005). Kuchma considered that European choice to be evident as Ukraine belongs to a European Christian civilisation (Kuchma 1996). Kuchma wished in his declarations to re-join the West and become members of the European family and 'return to Europe' became a slogan (Kobzar 2009). Despite Ukraine fitting geographically into European borders there was no reference to European values and indeed his direction seems to have been more driven by the fact that the EU was a convenient option to balance Russian dependency and amicable relations with the West that would help Ukraine benefit from foreign aid (Molchnakov 2003).

During his second term, which was characterised and won by pro-Western policy goals, Kuchma's policy soon after shifted to a pro-Russian one. This move was motivated by a so called 'Kuchmagate' scandal where he was involved in secret audiotape recordings, high-level corruption and an unwillingness to resolve opposition journalist Gonggadze's murder in 2000 (Kuzio 2003b). It was also a result of isolation from the USA after 9/11 when Russia-US relations became a priority. After this Kuchma steered Ukraine to become a Eurasian Economic Community observer, which was seen as an alternative to the EU (Kuzio 2005a). He however denied contemplating membership which would be contradictory to EU membership (Kuzio 2005a). These actions reflected more of a multi-vector policy than any belonging to the EU and besides his rhetoric there was no ideological foundation for Kuchma's foreign policy: it reflected his own interests (Kuzio 2005a). When EU membership desire was expressed multiple of times and not responded to by the EU, Kuchma was also at the same time quick to announce that Ukraine would not even be interested in joining and assumed a stronger orientation to Russia, demonstrating that the orientation was not to do with identity or values but rather a drive toward membership. He declared: 'If I were today invited to join the EU, I would refuse' (Kuzio 2003a). In addition it was evident that EU integration was not in his plans as he appointed Yanukovych as his 'heir' who at that time was not pro EU integration.

There was also no consensus on the EU as a direction among the political parties (See Figure 8 in the Appendix). During the first presidencies the political scene was split between two political camps, the Western (Social Democrats and Liberals) and the Slavophiles (Socialist and Peasants). While they saw CIS relations during Kravchuk's

rule either as an opportunity for a ‘civilised divorce’ from Russia (Kuzio 2003c) or a potential restoring of the USSR, 95 per cent of the centre-right political party Rukh members and 86 per cent of Derzhavnist (Statehood Block) deputies insisted that Ukraine would quit the CIS (Malinkovich 1999:186) and the Alliance of National Communists and National Democrats promoted so called Baltic options that saw Russia as the ‘other’. However, the parliamentary elections were won by the Communist Party and especially Russophone eastern Ukraine opinion polls since 1992 showed support for a pro-Russian orientation, CIS integration and its economic space participation and a Russian-Belarus Union (Kuzio 2005a).

In the election in 1994 a similar perception was maintained as demonstrated in the MFG datasets. Nine parties out of 16 were orientated toward the Russia/CIS vector whereas seven parties toward the EU. At the same time only three parties of the total 16 parties were viewing positively the western values of human rights, democracy, market economy and the fight against corruption. Furthermore, 6 parties had nationalist tendencies. While by 1998 the perspective of the EU had over taken the Russia direction and half of the parties stood by the EU standards, in 2002 no parties were positively or negatively orientated to the EU. Three parties were, however, orientated to Russia/CIS and only one party agreed with all the four values representing the West and the EU, therefore, demonstrating that identification was low until then.

The second period took place after 2002 when identification with the EU started appearing. In 2004 when president Yuschenko came into power, as a consequence of the events of the Orange Revolution, the orientation was fully set toward EU integration. The President in his annual addresses was referring to EU integration as the main priority and also called in his speeches for returning to the European family and the common roots that Ukrainians share with Europeans. In 2005 Yushchenko expressed when speaking to the Parliamentary Assembly of the Council of Europe (PACE) in February 2005: ‘we, along with the people of Europe, belong to one civilization. The realization of the strategy of our foreign policy aim is membership in the European Union’ (Kuzio 2006b). This view was also shared by the others in the leadership seeing the EU as a policy goal, even if they differed in view on NATO.

Political party poll results indicated that all the main parties (Communists, Socialists, Yulia Tymoshenko Bloc, Our Ukraine and For United Ukraine) supported the European integration goal in 2002 (Wolzuck 2004). Even if Party of Regions was known as the

most pro-Russian, it also confirmed that they only differ in their perception on when the EU integration should take place but not on the question of whether.⁵⁹ Our Ukraine only saw it necessary to pursue within 5 years time whereas the Socialist and For United Ukraine saw it being necessary in 10 years and the rest in 20 years time. They however were split between their perception on maintaining relations with the CIS which was supported by the Timoshenko Bloc and Our Ukraine whereas others wanted increased cooperation.

The trend also continued since then and the MFG datasets on the results of the parties in 2006 and 2007 also reflect that the parties demonstrate a majority support toward EU integration. Three parties out of five support the EU vector whereas only two parties supported the CIS and Russia vector. However, despite this only one party out of five was fully agreeing with the western values and also nationalist tendencies existed among two of the parties. Similarly, in 2007 a majority of the parties orientated to the EU positively but shared values again were only agreed by one party as well as national tendencies present among two parties. Thus, in sum orientation toward the EU was clear until 2007 but however was at best mixed because while the membership prospect was pursued, the CIS and Russia vector also remained almost as popular and the EU values were not agreed on by a majority and finally, nationalist tendencies were present.

The third phase of identification with the EU took place between 2007 and 2010: Ukrainian relations with Russia were deteriorating due to gas disputes, Yushenko's failure to deliver expected promises on European integration and economic reforms because of the difficulties in the coalition government and the external situation of the economic crisis. The events were followed by the election victory of Yanukovich in 2010. As a consequence the West expected that Yanukovich would have shifted to a pro-Russian position (Wydra 2010) but it has been proven wrong thus far. This was demonstrated in the gestures since Yanukovich's leadership. Instead of organising a first trip to Moscow he visited Brussels which was seen as a sign that European commitment in Ukraine was still present (Wydra 2010). He also pledged that 'European integration is the key priority for Ukraine', in Brussels on 1 March 2011 (Euractiv News 2011a). This was also backed by Prime Minister Mykola saying that European integration will remain the same as before and was even addressed in the 'Law on the Basic Principles of Domestic and Foreign Policy of Ukraine' (Wydra 2010). Ultimately

⁵⁹ Author's interview with an interviewee no. 15, Kiev, April 2008.

Yanukovych's reaction in April 2011 to Russia's invitation of cutting its gas bills by 8 billion dollars per year if it joined Russia, Belarus and Kazakhstan in a customs union was making it clear that Ukraine preferred to finalise a free trade deal with the EU and this would make it impossible to join the ex-Soviet trading block. 'Our main priority is integration into the EU', 'We are ready to sign the Association Agreement this year', 'We want the prospects of Ukraine entering the EU to be included in this accord so that the accord would not be empty' Yanukovych maintained (Choursina 2011). Therefore, it indicates that elite identification with the EU still exists to some extent in terms of belonging, having chosen EU cooperation instead of Eastern orientated cooperation.

In sum, Ukraine's identification has been shifting between the EU and Russia since its independence. Even while its leading Elite, Since Orange Revolution, tried to emphasise its western orientation it has also always considered the consequences of it to Russia and therefore at most has been at medium levels.

4.4.2.2 Population Identification with the EU

The population level demonstrates the lowest levels of identification with the EU out of the three states. A majority of the population, according to a Razumkov survey from 1992 until 2002 had answered that Ukraine's future lay with Russia instead of the EU. The percentage for Russia or Eastern orientation has been between 30-54 per cent whereas EU support has been between 12-33 per cent at all times. Therefore, by 2003 there had not been any orientation toward the EU as an aspiration group to belong to at the population level. After 2003 until 2008 answering the question where the future lies also always receives a higher score for Russia which was between 28-52 per cent while the EU support was only between 25-33 per cent at all times. Also, the willingness to join the EU was at the lowest in Ukraine out of the three states and in addition, was experiencing a reducing trend in support and a growing opposition to membership. For instance, in 1992 82 per cent of the population was supporting EU membership, in 2002 the support rate was 65 per cent but since 2008 there has been a reducing trend and only around 48-57 per cent between 2008-2011 and by 2011 only around 40 per cent were pro, and as many as 30 per cent against EU membership. The perception of the shared values among the population received little support in Ukraine as well as in Moldova. The economic benefits were found to be the most important thing that Ukraine would gain from the EU, leaving democracy and human rights in the lower positions. In addition, Ukrainian's did not either find themselves as Europeans according to

population poll in 2000. The statement 'I am European' had only 8 per cent support among population whereas 57 per cent did not identify themselves as Europeans (Light et al. 2000).

4.4.3 Summary of EU Membership Prospect and identification with the EU in Ukraine

This section demonstrated that membership prospect in Ukraine has been medium at all times but it has only had a partial ability to motivate Ukraine to take on changes during the Orange Revolution as Ukraine has been particular on its important role to the EU and maintains that there is no reason for expensive changes without a prospect for EU membership. Identification with the EU in Ukraine did not take place before the Orange Revolution and after it has been fluctuating in relation to the perceived prospect of EU membership. Ukraine having been included in the CIS through observer status since 1994 and participation in the formation of the CIS Single Economic Space (CIS SES) in 2003 with Russia, Belarus, and Kazakhstan was perceived by the West as a signal that Ukraine had forgotten its earlier objection to deeper integration with the CIS (Kuzio 2006a). Belonging to the European family rhetoric was mainly driven by the leading elite during the Orange Revolution whereas when the membership prospect was seen to have been lost also the rhetoric has then emphasised EU relations on an issue by issue basis. The population has overall demonstrated very little identification with the EU in terms of belonging, values or identity and it has preferred the East as a partner. Therefore, in comparison to Georgia, identification with the EU has been lower in Ukraine and in comparison to Moldova, it has only been emphasised by some groups of the elite while in Moldova the population identifies more with the EU.

4.5 Conclusion

This chapter examined the domestic conditions in the three ENP states that enable the evaluation together with the issue-specific factors on the conditions under which compliance takes place. The chapter analysed the levels related to each country across both macro variables and highlighted the implications in regard to acting as influencing factors for explaining compliance. Having done so, it demonstrated that the membership expectations in Moldova was the highest, in Ukraine medium and in Georgia lowest while identification with the EU was highest in general in Georgia, whereas Moldova and Ukraine had lower levels. The implication in the case of Moldova is that membership can be seen as a driving force for compliance from 2009 onwards. In

Ukraine it can work as a possible explanatory factor between 2002 and 2008 whereas in Georgia it is unlikely to explain the compliance at any time. However, identification with the Georgian case may offer more explanatory value than in Moldova or Ukraine. The levels of both variables and implications of their potential in promoting compliance are used for analysis together with the issue-specific conditions in the following chapters. The following case study chapters where the variables are put into practice allow conclusions to be made on the conditions under which compliance takes place and what role the EU has in the ENP countries.

Table 4.1 EU Membership Prospect

	Georgia	Moldova	Ukraine
Europeanness	-	+	+
Copenhagen Criteria fulfilment	+	+/-	-
Least threats of accepting the country	-	+/-	+
Most benefits of accepting the country	+/-	-	+
Support	-	+	+
Overall prospect for EU membership	-	+	+/-
Country Perception of EU membership and its likelihood to motivate change	<p>Long term perspective</p> <p>‘NATO-priority’</p> <p>EU Membership prospect does not work as an incentive</p> <p>Low impact</p>	<p>Short/medium term perspective</p> <p>‘Will converge until the EU cannot say no’</p> <p>EU Membership Expectations medium until 2009 and high since 2009</p>	<p>Medium term perspective</p> <p>‘Expects the EU to give a credible membership prospect before full commitment for expensive change’</p> <p>EU Membership Expectations 2002 - 2007 high and low/medium other times</p>

* + high, +/- medium, - low

Table 4.2 Identification with the EU

	Georgia	Moldova	Ukraine
Identification with the EU	<p>Medium 1992-2002</p> <p>High 2002-2011</p> <p>The EU referred as the only orientation where to ‘belong to’</p> <p>NATO and US security providers</p>	<p>Medium 1992-2011</p> <p>Loyalty to Russia, but European values</p>	<p>Low/Medium 1992-2002</p> <p>High 2002-2007</p> <p>Medium 2007-2011</p> <p>Elite split between East and West</p>
Overall score	+	+/-	+/-

*+ high, +/- medium, - low

5. The EU's Influence in the Area of JHA in Georgia

5.1 Introduction

As a consequence of unemployment, poverty and instability as many as one million people of Georgia's small population left the country between 1990 and early 2001.⁶⁰ Georgia also became the country with the highest amount of asylum seeker applications in the Caucasus to the EU (Eurostat 2008; 2009). In addition, weak border controls have presented opportunities for trafficking and illegal border crossings (Fritz 2004).

The EU's attention towards Georgia developed slowly in general and in migration management issues specifically. It took incidents such as the murder of an EU delegation staff member, the Tacis contractor kidnapping in 2002 and achievements during the Rose Revolution before the EU reviewed its policy on Georgia and adopted a revised Country Strategy Paper in September 2003 (European Commission 2005a). The EU acknowledged Georgia's commitment towards integration into the European structures and recognised that inclusion in the ENP could help Georgia with its efforts. Previous EU relations with Georgia only had a limited focus on JHA related issues; the main cooperation areas were the textile industry and agricultural issues.⁶¹

In June 2004, Georgia was included in the ENP, at its request, and following a recommendation made by the European Commission (Ivaniashvili 2004). The EU action plan was launched in 2006 to cover five years and forms the basis of cooperation, besides the PCA commitments, before the Association Agreement is completed, for which negotiations began in July 2010 (Ashton 2010).

This chapter traces the EU's leverage to promote compliance in the JHA sector in Georgia. The first part discusses border management reform, secondly it discusses the readmission agreement, followed by asylum and refugee protection, and criminalisation of trafficking in human beings. Each issue sector is structured in the following manner: first the background is discussed by addressing the initial conditions of the issues in the country. Then the EU objectives in the action plan, including conditional incentives that are offered in regard to completion of the task,

⁶⁰ Georgian Population amounts to just under 4.5 million; See: http://www.geostat.ge/index.php?action=page&p_id=473&lang=eng.

⁶¹ Georgia-EU related data reviewed in Prelex and Comitology register since 1991.

financial assistance available for each sector, and technical and capacity building tools are discussed. It is followed by a discussion on issue-specific domestic conditions, focusing on costs before examining alternative explanatory factors both at macro and micro levels. Finally, an analysis of compliance is presented, which also draws attention to the country-specific macro conditions that were introduced in the previous chapter and legitimacy that was already discussed in chapter three. It reveals the conditions that were present when compliance took place, the variation in the dependent variables and captures the EU's role and Georgia's motivations for compliance.

This chapter argues that the EU's influence was evident only to a limited extent in promoting compliance with its action plan demands in Georgia. The successful areas of compliance were border guard reform and readmission agreement, with the help of the EU's capacity building cooperation and the incentive of visa facilitation respectively. In the area of trafficking of human beings, the EU was a major contributor indirectly as it helped to facilitate justice reform sector which enabled higher levels of prosecutions by increasing efficiency and reducing corruption. Overall, these cases demonstrated that the EU's involvement in Georgia was more supporting the direction in which Georgia's own reform plan was going rather than specifically triggering compliance.

5.2 Border Guard Reform

Georgia adopted the old Soviet-style system for its border management after its independence staffing with conscripts contributed to corruption and inefficiency as border guards were insufficiently trained and they were paid low wages which made survival impossible with honest means.⁶² Georgia started addressing these challenges in the 'Law on the State Border' which was adopted in 1998.⁶³

The EU focused on border guard reform in Georgia for the first time when it allocated Tacis funding in Annual Programming in 2002 for the Georgian State Border Guard Service. However, the launch of the ENP and the action plan in 2006 sparked increased interest and more continuous attention on a wider range of issues and in border management specifically. The EU acknowledged the border deficiencies in Georgia as a potential threat to the EU in its country strategy paper maintaining that 'because of its location between Europe and Central Asia, Georgia could, without strengthened

⁶² Author's interview with an interviewee no. 60, August 2011.

⁶³ The Law on State Border 1998, Available at: www.dcaf.ch/content/download/36279/527775/file/State-border.pdf.

controls at its borders, become a transit country not only for energy and goods, but also for illegal migration, illegal trafficking and criminal activities' (European Commission 2007b). Overall, border management became more topical for the EU after the terrorist attacks in the US in 2001 (Welt 2005) and after a realisation that this unstable area was coming closer to the EU due to Bulgaria and Romania's accession (Kobaladze and Tangiashvili 2006).

The EU-Georgia action plan, in regard to border management, focused on the following issues: a comprehensive border management strategy to be developed in cooperation with the European Union Special Representative (EUSR) (implementation date: by 2006); to fulfil its commitments on border management reforms (increase budget, integrate the Georgian State Border Guard Department into the Ministry of Interior, reform of the Ministry of the Interior etc.); to continue EU-Georgia cooperation on border management issues; to enhance inter-agency cooperation among state authorities involved in border management as well as cooperation with neighbouring countries, including proper border delimitation, demarcation and control (EU-Georgia action plan, 2006). It also recommended full implementation of existing and planned multilateral and bilateral border cooperation agreements and protocols; development of a comprehensive education and training strategy on border management for the relevant Georgian agencies (including improved understanding of the Schengen rules and standards) and enhancing the efficiency of relevant Georgian authorities (Police, State Border Service, Customs). This can be completed according to the EU action plan through providing modern equipment, adequate infrastructure, facilities and appropriate training in order to increase the security of the Georgian borders and the effectiveness of border crossing checkpoints and to adopt and implement a strategy for an integrated system of border management (implementation date: 2007).

As learned in chapter two, border guard reform, within the border management sector, will be the focus of this thesis. Reform is considered as a transformation of the border guard agency into a civilian law enforcement agency and therefore involves demilitarisation of the service, granting of investigatory powers to the unit as well as the provision of professional training to border guards.

5.2.1 EU Conditionality, Assistance and Capacity and Technical Expert Groups

The EU-Georgia action plan did not make any direct reference to an incentive in regard to compliance with the border guard reform objectives. However, before the launch of the EU-Georgia action plan in 2005 there had been talks about potential visa facilitation for third countries for complying with a readmission agreement which also listed as one of the issues border management. For instance, the Common Approach on Visa Facilitation- maintained:

‘The EC should take account of the following factors inter alia in deciding whether to open negotiations on visa facilitation with third countries: whether a readmission agreement is in place or under active negotiation; external relations objectives; implementation record of existing bilateral agreements and progress on related issues in the area of justice, freedom and security (e.g. border management, document security, migration and asylum, fight against terrorism, according to the standard counterterrorism clause agreed by COREPER on 6 March 2002, organised crime and corruption); and security concerns, migratory movements and the impact of the visa facilitation agreement’ (Council of the European Union (2005))

Therefore, border guard reform was already indirectly linked to the incentive of visa facilitation from 2005. In addition, since the EaP and the launch of Integrated Border Management Strategy (IBM), the EU has provided an opportunity for visa-free travel as a long-term incentive to all of the EaP members under the condition of also fulfilling border management requirements among other issues (Rettman 2009). Thus, direct conditional benefits in regard to the fulfilment of border management demands were low until 2005, medium until 2009 and since then high.

Georgia has received financial assistance from the EU since its independence.⁶⁴ The first years after independence, EC assistance was focused mostly on humanitarian assistance and food aid (see: European Commission 2003). In 2000 it started paying attention to technical aspects including the border management sector. Since 2002 Tacis and Aeneas funding and since 2007 the ENPI and thematic funding have been the main contributors of funding in the border management sector. From the launch of the EaP onwards in 2009 border management has also been financed through the IBM programme. In addition to Tacis and the ENPI funding instruments thematic funding

⁶⁴ The total EU assistance to Georgia from 1992-2006 amounted to €505.2 million, thus, per year average was €36.1 million. From 2007-2010 the country programme provided €120.4 for three years, indicating a slight increase since the ENPI launch, as per year it meant €40.1 million allocated to Georgia. €180.29 million for the period 2011-2013 was allocated, again increasing the portion from the previous time period. The amount of EU funding was per capita €26 (ECRE 2008).

has also been allocated to Georgia.⁶⁵ Funding has covered the following projects: Georgian border guards received €100,000 in June 2003 to purchase equipment to improve monitoring of the department of the Georgian State Border Protection and the OSCE Border Monitoring Operation (Fluri 2005). Annual programming in 2004 allocated a total of €6.8 million in the same section for six issue areas, one of which was border management. It covered support for the transfer of the Border Guards Department into the Ministry of Interior, capacity building of the Ministry of Interior and also elaboration on secondary legislation covering border guards. The 2006 programming cycle also allocated assistance to border management which was one of three sections under the rule of law receiving €7.9 million. These amounts represented before 2007 just below 20 per cent on average of the funding annually given to Georgia in total.⁶⁶

Since 2007 the ENPI has coordinated EU funding in Georgia. The border management sector since then has continued to receive on average 20 per cent of the funding Georgia has received in total. The EU funding has been delivered mainly since through the South Caucasus Integrated Border Management (SCIBM) program implemented by the UNDP.⁶⁷ The IBM programme is one of the flagship initiatives launched since the EaP in 2009. The EaP mentions that funding for IBM is focused especially on support efforts to establish IBM systems, including cooperation on border control and border demarcation (European Commission 2008:2). It also included a budget for three of the Caucasus states of €1.4 million to promote ‘continuation of training and support for the implementation of the upcoming IBM system strategy and the reform of the ministries/agencies concerned’⁶⁸. In addition, the EaP allocated a total of €600 million from 2010-2013 to the six EaP states out of which IBM is also financed. Overall, direct funding programmes on border management allocated approximately €37 million until September 2011.⁶⁹ This is the highest receiving area as migration management and readmission issues received in total around €20 million, asylum related issues €1.3

⁶⁵ See list of programmes at: http://undp.org.ge/index.php?lang_id=ENG&sec_id=40.

⁶⁶ Author’s calculation on the bases of the NIP and action fiches.

⁶⁷ See: www.undp.org.ge/files/project_files/annex1-SCIBM-description.pdf.

⁶⁸ Programme description available at: [tp://undp.org.ge/index.php?lang_id=ENG&sec_id=40&pr_id=116](http://undp.org.ge/index.php?lang_id=ENG&sec_id=40&pr_id=116).

⁶⁹ Author’s calculation on the bases of the NIP and action fiches.

million (IDPs received €174 million) and human trafficking around €3 million.⁷⁰ Thus, EU funding for the border management sector in Georgia was high.

Besides financial assistance, the EU aims to influence border guard reform through EUSR,⁷¹ FRONTEX, Twinning and TAIEX. The EUSR Border Support Team was established by the Council Joint Action of 28 July 2005. EUSR's mandate was extended until August 2008 when it was replaced as a Monitoring Mission (EUMM) and extended again until 14 September 2011. Since the initiation of the team the EU's focus has been supporting both formal and behavioural compliance with the border guard reform objectives.⁷² It provides support through assessment of the border situation, facilities, confidence building between Georgia and Russia and assists the Georgian border police and other relevant government institutions in Tbilisi with implementation of the comprehensive IBM strategy (Council of the European Union 2010). The contribution at the legislative level has been through the IBM strategy which was drafted with the help of the EUSR team who recommended a move away from a conscript based system and overall encouraged to aim for a similar system as in the Western Balkans.⁷³

In addition, in December 2008, FRONTEX signed a working arrangement with the Georgian border police. Its objectives were to facilitate information exchange and to contribute to risk analysis, training, research and development, and coordination of joint operational measures.⁷⁴ The agreement also enabled the Georgian Border Police to benefit from FRONTEX training tools such as the Common Core Curriculum for basic border guard and forgery detection training which are financed by FRONTEX.

The TAIEX and Twinning programmes have had a limited use in the border management area. So far there have been two TAIEX workshops regarding movement of people and mobility in 2008. One Twinning project has taken place since 2010,

⁷⁰ Author's calculation on the basis of the NIP and action fiches.

⁷¹ The EUSR Border Support Team in Georgia was established following the closure of the OSCE Border Monitoring Mission (BMO) in Georgia. The Council Joint Action 2005/582/CFSP of 28 July 2005, amending and extending the mandate of the European Union Special Representative for the South Caucasus, established the EUSR Border Support Team in Georgia. The EUSR Border Support Team had an initial six month mandate, which was extended for 12 months with Council Joint Action 2006/121/CFSP of 20 February 2006.

⁷² Author's interview with an interviewee no.60, August 2011.

⁷³ Author's interview with an interviewee no. 60, August 2011.

⁷⁴ See: http://www.frontex.europa.eu/newsroom/news_releases/art50.html.

focusing on strengthening both the national customs and sanitary-phytosanitary border control.⁷⁵

In sum, the main EU approach to influence border guard reform has been through its indirect incentive from 2005 in regard to visa facilitation and from 2009 the visa liberalisation potential. In addition, the EU has promoted compliance through funding which it has provided since 2000. After 2005 it has also engaged via its own agencies, especially EUSR, which have been closely involved in law drafting and facilitating training. Twinning and TAIEX type of programmes have been limited to a few workshops.

5.2.2 Domestic Conditions and Costs

The border control was weak when the EU first paid attention to border guard reform in Georgia. The border guards in 2005 were still ‘relative to armed forces’ even if it was structured under its own border unit (Lynch 2005). Moreover, it was also under-funded, under-equipped and under-trained (Lynch 2005). For instance, while the OSCE mission reported 800 illegal border crossings across the Russian-Georgian border in 2005, the Georgian border guard reported none (Lynch 2005).

The adoption costs against this backdrop, when reforming the military orientated border unit into a rule enforcement agency, consisted of border guards training and the phasing out of conscripts. The political costs at the adoption level in reforming the agency to a rule enforcement agency, which in the case of Georgia involved bringing it under the jurisdiction of the Ministry of Internal Affairs (MIA), were low as the decision among the stakeholders did not cause any disagreement because the MIA is one of the most influential ministries.⁷⁶ At the implementation level economic costs were high because adoption of a professional service meant that border guard training was required and wages needed to be increased. This was necessary in order to be able to reduce petty corruption that took place at border checkpoints (Welt 2005). The wages were raised from 80 Lari to 605 Lari in 2004,⁷⁷ which also created more economic costs for the government.

⁷⁵ See: GE10/ENP-PCA/FI/04 available at <http://www.csn-web.com/twinningpresentation.htm#MarineGeorgia>.

⁷⁶ Author’s interview with an interviewee no. 60, August, 2011.

⁷⁷ See: Border Guard Service Data sheet: at: <http://www.gbg.ge/?lang=eng&page=203>.

5.2.3 Macro and Micro Level External Pressure and Support

The other main actors apart from the EU were the NATO, the IOM, the US state department, the OSCE, and regional cooperation programmes which aimed to promote border guard reform through guidelines or financial and technical programmes.

NATO informally has criteria to be adhered to if the country wishes to become a member and therefore could be a competitive influencing actor in the ENP countries (Trapans 2005). Georgia has had close relations with NATO since its independence and particularly in 1992 when Georgia joined the North Atlantic Cooperation Council⁷⁸ and further deepened cooperation by joining the Partnership for Peace programme in 1994 and the PfP Planning and Review Process (PARP) in 1999 and from 2002 onwards expressing its desire for membership.⁷⁹ In its goal to become a candidate for NATO membership since 2004 Georgian officials have been aiming to fulfil an Individual Partnership Action Plan (IPAP), which is a programme for modernisation and democratisation of the defence system (Miller 2005). One of the IPAP commitments includes an enhanced border and thus could also offer a competitive explanatory force to the EU's influence.⁸⁰ While NATO membership potential could have been a motivating factor for Georgia, since 2008 and the Russia-Georgia war, the potential to accede was put on hold because of the potential instability that accession could have (Nichol 2008; McGuinness 2011). Thus, ever since 2008 the conditionality by NATO has had little impact for Georgia's willingness to comply, even if it has had a desire for membership since 2002. Therefore, this desire may have provided an incentive between 2002 and 2008.

Other organisations have no potential to use membership leverage in Georgia which would have consequences for the border management sector. Despite this the presence of other organisations in Georgia may have had socialisation or capacity building impact since they have been in the country: the US, the OSCE since 1992, the IOM since 2000 and the Council of Europe since 1998.

The main two aspects of support have been training and IBM standard transfer. The abovementioned organisations have focused on providing training but not particularly on promoting the institutional change that the EU requested in the action plan. The

⁷⁸ Later renamed the Euro-Atlantic Partnership Council in 1997.

⁷⁹ See: http://www.nato.int/cps/en/natolive/topics_38988.htm.

⁸⁰ See the list of Georgia's Commitment Under the Individual Partnership Action Plan (IPAP) with NATO – 2004-2006. Available at <http://www.civil.ge/eng/article.php?id=11448>.

border guard training has been implemented by the IOM through a project from March 2005-December 2005 called Capacity Building in Migration Management (CBMMP) which was focusing on training for up to 1,400 border guards and was funded by the Titan Corporation and the US state department.⁸¹ The OSCE had a mandate from December 1992 until December 2008 in Georgia⁸² and it provided training from 2005 onwards as earlier mandates were focusing on border guard security. Since 2005 in one year 12 training courses were completed and the following year in the capacity building programme a further three courses were conducted. In 2007 a memorandum of understanding was signed between the border police and the OSCE.

International organisations have additionally supported the Georgian transfer to IBM standards. For instance, the OSCE on 'Transitional Institutional Support Programme' facilitated 10 seminars and 13 further courses in 2008-2009, until the mission liquidated in Georgia at the end of 2008.⁸³ The IOM has also been cooperating with the EU and in May 2008 a programme was created for the development of the border management system according to the IBM strategy for Georgia.

In sum, the only organisation to be considered in regard to affecting domestic decision making is likely to be NATO from 2002-2008, an institution which offered membership conditionality. However, the EU has been the most involved entity in border management reform in regard to structural development. Training and implementation has been mostly supported by the OSCE and the US, however, the EU has prevailed since 2008 when the OSCE was liquidated.

5.2.4 Process and Extent of Formal and Behavioural Compliance

In 1992 the Georgian Border Service was founded and became a part of the Ministry of Defence. Equipment and infrastructure were poor and corruption was widespread (OSCE Newsletter 03/2008). The structural transformation to a law enforcement agency started in 1994 when the unit was separated from the Ministry of Defence and when it in 1996 became the State Department of State Border Guard of Georgia. Two years later the changes were put into law by adopting 'State Border of Georgia'. Despite legislative changes that took place before the Rose Revolution, implementation of the legislations

⁸¹ See IOM activities, Available at: http://www.iom.ge/index.php?activities&activities_main&activities_start&photo.

⁸² 'Workshop to Identify the Proper Role of the OSCE in Facilitation', FSC.DEL/34/11, 27/01/2011, OSCE.

⁸³ Ibid.

was mostly only rhetoric (Lynch 2005). The real reform toward international standards started just after Saakashvili decommissioned the security service in 2004 which was corrupt and based on the Soviet inherited system (Lynch 2005).

In 2005 the transformation started with ‘Concept of Development for the Georgian Border Service’ document which outlined all the required changes. It also recognised the need for a new law that would be developed in line with NATO and EU recommendations.⁸⁴ When the law was adopted in 2006 it was compliant with the EU standards as it defined the principles, objectives and structure, primary tasks and also included provisions for collection, storage and exchange of data. It entered into force at the beginning of 2007 (Chindea *et al.* 2008). Along with the new law regulations on social security for the border guard personnel, the rules of service and the standard operations procedures were approved by the President.⁸⁵ In sum, as the agency distanced itself from a military type agency and outlined practices of the border guard as a civilian agency with investigatory powers and as it was incorporated into the MIA, it was compliant with the action plan recommendation at the formal level in 2006.

The implementation of the law has been compliant with some aspects of the action: staffing has fully moved away from conscript service and investigatory powers have also been introduced according to legislation.⁸⁶ Professionally contracted personnel have been given higher salaries and have been trained in a new training centre (IOM 2008a). However, there still is a need for further training and it is not yet fully compliant with the EU standards.⁸⁷ In order to be a fully functioning agency on the ground information exchange between ministries needs to be enhanced and illegal crossings should all be reported which is not currently the case.⁸⁸ In regard to required incorporation into the MIA, some restructuring took place in December 2008, thus, formal compliance took place in 2006 and behavioural compliance partially occurred in 2007-2008.

⁸⁴ See Border Guard Information. Available at: <http://www.gbg.ge/?lang=eng&page=203>

⁸⁵ Ibid.

⁸⁶ Author’s interview with an interviewee no.60, August 2011.

⁸⁷ Ibid.

⁸⁸ Ibid.

5.2.5 Conditions and Logic for (non)Compliance

5.2.5.1 Formal Compliance

Compliance took place in 2006 through the creation of a new law that established the border guard service as a rule enforcement agency which uses demilitarised and professional staff. At that time conditions which were favourable for compliance were high identification with the EU, visa facilitation as an indirect incentive, sizeable financial assistance, EUSR presence, low political costs and NATO membership incentive. Low EU membership prospect and low legitimacy did not stop compliance.

Because compliance with the EU standards already took place in 2006 it suggests that progress was under way toward the new law already before EU involvement because it was adopted only a couple of months after the ENP action plan was launched. As funding toward the sector was more focused on projects at the implementation level it is unlikely to have influenced the decision making to create a new law. As a consequence it suggests that the willingness for NATO membership was a driving force for the border guard reform decision which was initiated around the same time when NATO membership became a goal. In fact NATO membership wishes were expressed since 2002. While this can have been a motivating factor for the initial change the help that EUSR was giving at a practical level was found to be important. EUSR was already active in Georgia in 2005 and a team, together with the local and international experts, was directly involved in the drafting of the law.⁸⁹ In sum, logic of compliance reflects the importance of external cross-conditionality and the EU using its capacity building cooperation agency such as the EUSR. Therefore, it can be concluded that while the EU did not trigger compliance, it did have a partial role in assisting with drafting the law for border guard reform.

5.2.5.2 Behavioural Compliance

Behavioural compliance took place partially as border guard conscripts began to be replaced and the border guard system was reformed into a law enforcement agency with investigative powers and appropriate training. Partial compliance took place mostly under the same conditions except for higher economic costs, although some capacity building costs were supported by international organisations and also the costs of the

⁸⁹ Ibid.

IBM programme were mostly covered.⁹⁰ The main challenge for efficient training is still currently that the wages in the public sector are far lower than in the private sector and the staff are not interested in staying in the position for more than a few months and often the knowledge is not passed on.⁹¹ In this situation support that is delivered by the international organisations in assisting the countries is going for waste as it is not passed on. Thus, it demonstrates that the EU and international training efforts have only been offering a temporary solution unless the whole staffing structure is further reformed and made to be more attractive to work for.

Table 5.1 Conditions for (non)Compliance-Border Guard Reform in Georgia

Georgia	EU Membership Prospect	Identification with the EU	Clarity and Size of Issue-Specific Incentives	Financial Assistance	Technical Cooperation	Legitimacy	Political Costs	Economic Costs	External Pressures	Formal Compliance	Behavioural Compliance
Border Guard Reform	-	+/- until 2002 + since 2002	- until 2005 +/- since 2005 + since 2009	- until 2000 +/- since 2000	- until 2005 +/- since 2005	-	+	-	+ 2002-2008 NATO + since 1992 IOM/OSCE	+ 2006	+/- 2006 - 2007

*Low cost marked + (referring to a favourable element for compliance and vv).

5.3 Readmission Agreement

Georgia has become both a source and a transit country for illegal immigration as a consequence of the two secessionist areas, unemployment,⁹² relaxed border control and visa regulations, and the lack of a tracking system on entry and exit (Lomsadze 2010). There are estimations that up to 20 per cent of the population have left the country in the last few years.⁹³ Georgia is a transit country for migrants only to a small degree due to its underdeveloped transport connections and travel conditions even if it has a liberal entry and admission regime (IOM 2008a). Georgia also had the highest number of asylum-seekers applying to the EU from the South Caucasus in 2009 according to the

⁹⁰ ENPI East Regional Action Annex (2007) state that costs are covered by 95%. Available at : http://www.undp.org.ge/files/project_files/annex1-SCIBM-description.pdf.

⁹¹ Author's interviews with an interviewee no. 34 and an interviewee no.55, Tbilisi, October 2010.

⁹² Unemployment was reaching as high as 16.8 per cent in 2010.

⁹³ Estimations by Swiss Cooperation Office, Georgia (2007).

UNDP statistics: 4,700 applications were placed, compared with 4,000 for Armenia and 1,900 for Azerbaijan (Lomsadze 2010).

The EU mentioned readmission agreement for the first time in article 26 in the PCA in 1999. It notified that the Cooperation Council ‘shall examine which joint efforts can be made to control illegal immigration, taking into account the principle and practice of readmission’ (1999:2). Within the PCA framework, Georgia already agreed to conclude bilateral agreements with member states including the readmission of nationals of other countries and stateless persons who have arrived to the territory if they so request’ (art 75:2). For instance, Georgia negotiated bilateral readmission agreements with Bulgaria, Italy and Germany and was proceeding on negotiations with the Benelux countries, Austria, Cyprus, the Czech Republic, Estonia, Finland, France, Great Britain, Latvia, Lithuania, Poland, Romania, Slovenia and Sweden (European Commission 2010:73).

After the PCA, a readmission agreement, which would replace the bilateral agreements, was not brought up in the cooperation documents again until the ENP action plan called for strengthening ‘the dialogue and cooperation in the preventing and fight against illegal migration, which could possibly lead in the future to an EC-Georgia agreement on readmission’ (IOM 2008).

In this section compliance with readmission agreement both at formal and behavioural levels are traced. At the formal level compliance is considered to have taken place when Georgia signs the readmission agreement with the EU and at the implementation level it is considered compliant when the preparation for readmission agreement implementation is fulfilled in regard to four areas: implementation protocols, bilateral readmission agreements, detention centre conditions and reintegration programmes.

5.3.1 EU Conditionality, Assistance and Capacity and Technical Support

The action plan demand did not clearly mention a visa facilitation incentive, however, it was clear to the political authorities what to expect if they concluded the readmission agreement.⁹⁴ Besides the potential for visa facilitation, the readmission agreement was portrayed as a prerequisite for further cooperation with the EU. For instance, Mr Füle reported to the EU Parliament's Foreign Affairs Committee that signing the agreement

⁹⁴ Author's interview with an interviewee no.34, Tbilisi, October 2010.

in 2010 would pave the way for the EU to prepare for the launch of negotiations on Association Agreements with Armenia, Azerbaijan and Georgia (Füle 2010). EU incentives were, therefore, high from 2006 onwards.

EU financial assistance has been used since 2006 to help address consequences of readmission implementation: reintegration of Georgia's own citizens and providing temporary accommodation for third country citizens. Already before signing the readmission agreement, under the Aeneas programme, with an EC contribution of €511,354.37 and the Danish Refugee Council as an implementation partner, a two-year project from the end of 2006 until the beginning of 2009 titled 'toward durable re-integration mechanism project' was launched (Danish Refugee Council 2007). It aimed to enhance the capacity of the Ministry of Refugees and Accommodation (MRA) to support re-integration of returning migrants, rejected asylum seekers and other displaced groups (European Commission 2007).

After the readmission agreement was signed financial assistance has been higher. The ENPI allocated financial assistance which aimed to increase capacity in addressing repatriation of refugees, returned nationals and also supporting reintegration. In Annual Programming 2008 a fund of €6 million was created to support returned citizens with shelter and income generation projects and also by providing safe and dignified repatriation of refugees and disabled persons (European Commission 2008). Moreover, the ERGO project (Enhancing Returns to Georgia Operationally) was conducted from March 2009 until September 2010 with a budget of €789,000 and was implemented by the Danish Refugee Council. It aimed to enhance capacity by the creation of a practitioner network, and a manual and assistance packages for the use of protection of returnee rights in the 'Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia' (MIDPFOTAR).⁹⁵ In 2010 a further €3 million was allocated to readmission agreement implementation through a programme 'Supporting Reintegration of Georgian Returning Migrants and the Implementation of the EU-Georgia Readmission Agreement'.⁹⁶ It was established to cover three years and was implemented by nine EU member states and supervised by the Czech Ministry of Interior with the IOM and local authorities.⁹⁷ In 2011 the 'framework programme' has

⁹⁵ The Centre was established with the support of the US State Department and the EU.

⁹⁶ See: Targeted Initiative Georgia booklet. Available at: http://www.informedmigration.ge/en/pdf/booklet_2.pdf.

⁹⁷ Ibid.

also supported EU-Georgia agreements' implementation with €9.73 million (European Commission 2011) out of which one supported agreement was readmission in addition to DFCTA, Association Agreement, visa facilitation and the visa liberalisation roadmap. Lastly, on 13 May, 2011 two new projects were launched and funded by the EU and implemented by ICMPD. They aimed for capacity building and were focusing on 'Building Training and Analytical Capacities on Migration in Moldova and Georgia' (GOVAC) and 'Supporting the Implementation of the EC visa facilitation and readmission agreements in Moldova and Georgia' (REVIS). By the end of 2011 the total allocated amount was approximately €20 million. This level of contribution makes it the second highest area of support in regard to the investigated areas in this research in Georgia.

In addition to financial assistance, EU agencies and tools have also supported implementation of the readmission agreement after 2008. The main activities have been conducted in the framework of TAIEX, GEPLAC and FRONTEX and through mobility partnership initiatives but they have been so far limited to a few initiatives since 2008. There has only been one TAIEX workshop in December 2008 which aimed to inform the MFA and the consular services of their role in the implementation of readmission agreements (European Commission 2010). FRONTEX has completed six projects in Georgia so far, beginning in 2010 and focusing on organising return of persons from the EU Schengen territory to the country of origin⁹⁸ and also in two other joint projects directed towards Georgia and Armenia.

In sum, out of the EU's tools, conditionality was weak until 2006 and high after visa facilitation was included in general to readmission practices. In addition, financial assistance and technical support agencies started evolving just in 2006 and 2008 respectively, thus, the EU has mainly approached readmission agreement promotion by setting incentives for legal approximation and supporting the implementation through financial and technical assistance just after the readmission agreement was signed.

5.3.2 Domestic Conditions and Costs

While under customary international law a country has an obligation to readmit its own nationals and bilateral agreements are signed to facilitate this, readmission agreements that are signed with third countries also include an obligation to readmit third country

⁹⁸ Amounting to a total of €956,443.

citizens even if they are not part of the international customary law (Roig and Huddleston 2007). The costs that a country faces are to do with both groups of people.

In regard to signing the agreement the political adoption costs were low in Georgia as the decision to sign the readmission agreement did not encounter resistance from any decision makers and in fact there has been no real debate in regards to the signature of the readmission agreement. As a consequence it was agreed by all the stakeholders after a brief discussion.⁹⁹ There were already many bilateral readmission agreements in place so the principle of it was understood.¹⁰⁰ Moreover, as the amount of third country readmissions is small it did not cause any disputes.¹⁰¹ The population neither challenged the elite over it, nor showed dissatisfaction with the decision, thus, causing no concern for state stability.¹⁰² In fact it was welcomed as easier procedures for issuing visas attracted strong public attention (Patariaia 2010).

Economic costs emerged from the implementation of the readmission agreement. Even if transit costs are borne by the requesting state, the recipient states also faces costs related to both own citizens and third country nationals. Most of the readmitted are Georgia's own citizens as Georgia is not to a large degree a transit country and therefore the costs in regard to them are low. However, in regard to own country citizens economic costs can emerge due to the loss of remittances and consequences of reintegration. Firstly, remittances can form a large part of cash inflows to Georgia, thus, the loss of these can create costs for Georgia. Secondly, costs can arise from the integration activities that need to be organised for the own nationals after their return. The IOM estimated that 22.9 per cent of Georgia's population has emigrated i.e. 900,000 (IOM 2008a) and nearly 80 per cent are illegal migrants. Out of that some 72 per cent send remittances back to Georgia (World Migration Report 2010). 40.4 per cent i.e. 400,000 are estimated to be in Western Europe with 36.5 per cent estimated to be in Russia (World Migration Report 2010). Thus, the concerned population can be approximately 288,000 people that are potentially facing return from the EU with a significant potential loss of remittance. The amount of remittances in total in the four years from 2006-2010 varied from 7 per cent to 8.5 per cent of the GDP (National Bank

⁹⁹ Author's interview with an interviewee no. 34 and with an interviewee no. 60, Tbilisi, October 2010.

¹⁰⁰ Author's interview with an interviewee no. 34 and, Tbilisi, October 2010.

¹⁰¹ Ibid.

¹⁰² Author's interview with an interviewee no. 34 and with an interviewee no. 60, Tbilisi, October 2010.

2010). Some amount of this would also include remittances from the EU as most remittances to Georgia are sent from Russia, United States, and Greece (Trauner 2008). While this indicates that the costs could be high for Georgia, the experiences so far suggest that the amount of readmitted own citizens in fact is very small. Georgians are not a major group of concern and their return is not often the primary concern for many European states.¹⁰³ Indeed the experience of implementing a bilateral agreement between Georgia and Germany had demonstrated that the amount of Georgians in Germany has been so small in comparison to other countries that it had not even prompted Germany to act¹⁰⁴. Thus, economic costs are only medium as there are some costs but due to small number of people being readmitted they are not high.

5.3.3 Macro and Micro Level External Pressure and Support

There has been no direct pressure from other international institutions for Georgia to sign the readmission agreement, thus, the EU has been the only actor involved in its promotion.¹⁰⁵ However, the influence of Russia has also had a role in the cost-benefit calculations. Completion of the readmission agreement became very important for Georgia as it was seen as the only way to receive visa facilitation which was pivotal when Russia signed a visa facilitation agreement with the EU in 2006 (Barbé and Johansson-Nogués 2008). It consequently meant that the almost 70 per cent of residents in the secessionist regions with Russian passports would have a better chance of entering the EU than Georgian citizens.¹⁰⁶ President Saakashvili stressed urgency in the meeting with Barroso in Brussels in February 2007 to start the negotiations immediately with Georgia for visa facilitation (European Parliament 2007). Otherwise, rather than propelling a solution for the separatist areas, it could have contributed to maintaining the frozen conflict as its citizens in the separatist areas would have much more of an incentive to apply for Russian citizenship (Hernandez i Sagrera 2010).

The EU has relied on agencies such as IOM, ICMPD (International Centre for Migration Policy Development) and UNHCR in implementing the EU funded projects especially focusing on reintegration and returns. For instance, ICMPD has supported two projects in regard to the readmission agreement: to enhance the government's

¹⁰³ Author's interview with an interviewee no. 34 Tbilisi, October 2010.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

ability to offer facilities for reintegration to Georgia from January 2011 until June 2012 and through a programme aimed at Georgia and Moldova in supporting implementation of the agreement by enhancing the capacity of institutions by issuing support documents for visa applicants to international standards. The IOM has also been jointly implementing the second initiative 'Support to the Authorities of Georgia for the Implementation of the Readmission agreement with the European Union'.¹⁰⁷

5.3.4 Process and Extent of Formal and Behavioural Compliance

Considering that the PCA initially brought attention to the readmission agreement, it took fairly long before proceeding to negotiations. Whereas Georgia had been cooperative through bilateral agreements in regard to its own citizens throughout the years,¹⁰⁸ the negotiations for EU wider readmission agreement started just in 2008. Since then the agreements were completed after only two rounds of negotiations. The first meeting was held in June in Tbilisi and the second one in Brussels in November 2009. During the second meeting the agreements were concluded and at the same time the EU and Georgia signed a mobility partnership (EU Rapid 2009). Georgia signed on 17 June 2010 visa facilitation (European Commission 2010) and on 22nd November 2010 the readmission agreement (European Commission 2010).

Readmission came into force in March 2011 in Georgia. In practice it concerned implications for three groups of people: own state nationals, third country nationals and rejected asylum seekers (Kruse and Trauner 2008).

Implementation of the readmission agreement involves conditions of when and how countries take back the returned persons. While these procedures require a long list of obligations from time limits for replying to a readmission request, creation of a joint committee, to regulations about the entry and how the identity is verified (see IOM 2008a; Cassarino 2010; Aktoprak and Willams 2010) due to the recent nature of the implementation stage of the Georgian readmission agreement only preparation for implementation is analysed, i.e. implementation protocols, other bilateral arrangements being signed with the countries outside of the EU, accommodation centre arrangements and reintegration (Praxis 2011).

¹⁰⁷ See: IOM - Fact and Figures (2008), available at: <http://www.iom.int/jahia/Jahia/georgia>.

¹⁰⁸ Author's interview with an interviewee no. 34, Tbilisi, October 2010.

Georgia has already started signing implementation protocols and so far it has completed agreement with the Netherlands, the UK and Latvia.¹⁰⁹ It also has created bilateral agreements actively with countries outside the EU.¹¹⁰ Also MIDPFOTAR hosts a three year initiative within the mobility partnership framework which aims to support reintegration of Georgian returning migrants (Migration Policy Brief 2010). The initiative established a mobility centre within the MIDPFOTAR and offers assistance to returned migrants by preparing for reintegration and provides support with job searches, emergency health treatment and temporary accommodation when there is a need (Migration Policy Brief 2010). In sum, all levels of preparation for implementation of readmission agreement are taking place and therefore can be considered compliant with the EU recommendations.

5.3.5 Conditions and Logic for (non)Compliance

5.3.5.1 Formal Compliance

Formal compliance took place when the readmission agreement was signed in 2010. Compliance took place under high identification, high issue-specific incentives, high financial assistance and external pressure due to Russia having a visa facilitation offer before Georgia. Low legitimacy, weak EU membership prospect or lack of technical cooperation did not prevent compliance. Under similar conditions since the PCA but without the EU's visa facilitation incentive, technical and financial assistance and Russia's visa facilitation as a 'push' factor, compliance had not taken place. Therefore, high identification on its own was not a sufficient condition before for compliance, while other conditions were unfavourable for compliance. Georgia also started receiving assistance for the consequences of the readmission agreement already since 2002 and therefore is not capable of explaining the reason for signing the readmission agreement. Therefore, visa facilitation and the urgency caused by Russia receiving its visa facilitation prior to Georgia were the factors influencing the legal adoption of the agreement. In fact Georgian officials requested a readmission agreement immediately when the Russian visa facilitation negotiations began and therefore, this case demonstrates the EU's successful role in a country with a short term clear incentive in combination with being motivated by pressure from the Russian factor in the cost-benefit calculations.

¹⁰⁹ Author's interview with an interviewee no. 34, Tbilisi, October 2010.

¹¹⁰ Ibid.

5.3.5.2 Behavioural Compliance

Behavioural compliance had also taken place in regard to all four preparatory tasks. Bilateral readmission agreements with the EU member states were already being prepared for before the readmission agreement, while the others took place after the readmission agreement was signed. Compliance took place under similar conditions as formal compliance: low membership expectation, high identification, high incentive, low legitimacy, assistance and technical support from the EU and low costs. Compliance with preparation for the implementation of the readmission agreement is explained by low costs and that visa facilitation was able to motivate compliance. As an interviewee argued, visa facilitation was seen as important issue in Georgia and there was no debate even about whether or not to comply with readmission related issues but if something was asked for, it was decided that it would be done.¹¹¹ Moreover it was an easy task as Georgia is not a transit country and only needs to deal with a few transit migrants as well as its own citizens because they are not the primary group targeted in the EU countries.¹¹² Thus the case is best explained by a rationalist logic.

Table 5.2 Conditions for (non)Compliance - Readmission Agreement in Georgia

Georgia	EU Membership Prospect	Identification with the EU	Clarity and Size of Issue-Specific Incentives	Financial Assistance	Technical Cooperation	Legitimacy	Political Costs	Economic Costs	External Pressures	Formal Compliance	Behavioural Compliance
Readmission	-	+/- until 2002 + since 2002	+ 2006	+ 2006	+/- 2008	-	+	+/-	+ since 2007 Russia visa facilitation + since 2011 IOM, ICMPD, UNHCR	+ 2010	+ 2010 and 2011

*Low cost marked + (referring to a favourable element for compliance and vv).

¹¹¹ Ibid.

¹¹² Ibid.

5.4 Protection of Asylum Seekers and Refugees

Georgia is currently primarily a country of origin for asylum applications to Europe and only to a small degree a transit and destination country for potential asylum seekers. Most of the applications it has received are from the ethnic Kists who fled Chechnya during the wars (UNHCR Gap Analysis 2009). During the first war from 1994 until 1999 only a small amount of refugees arrived in Georgia, however, during the second war since 1999 there was an increase (UNHCR Gap Analysis 2009). Due to an increase of asylum seekers, Georgia used so-called group determination refugee status whereby each member of the group was regarded as a '*prima facie*'¹¹³ refugee and in 1999 Georgia granted the status to around 7,000 people. Chechens settled in the Pankisi Gorge close to Kists who are their ethnic relatives. Currently there are still around 900 Chechen refugees in Georgia (UNHCR Global Appeal 2011). In addition, Georgia also receives small numbers of refugees from other countries. Overall there are about 20-30 asylum seekers from different countries arriving in Georgia each year seeking asylum (UNHCR Gap Analysis 2009). The main group of people that are suffering from the lack of legislation and facilities have been the internally displaced people. It is estimated that Georgia has between 247,000 to 249,000 internally displaced persons (IDPs) (Kabachnic *et al.* 2010; IDMC 2010). They are a consequence of two separatist areas (UNHCR Global Appeal 2011), which uprooted 223,000 people in the early 1990s and again some 127,000 in August 2008 when conflict broke out between Georgia and Russia (UNHCR Gap Analysis 2009).

International organisations have, in their annual reports, identified serious flaws in various aspects of asylum seeker and refugee protection and in regard to the IDPs in Georgia including access to asylum, identification as a refugee, access to education, minimum standards for accommodation, food and travel documents (UNHCR Gap Analysis 2009).

Despite the seriousness of the lack of protection for refugees, asylum seekers and IDPs in Georgia, the EU did not make recommendations in regard to the situation before the action plan of 2006. In the action plan the EU expressed a large set of demands including protection of refugees and IDPs including the implementation of a national

¹¹³ *Prima facie* refugee status determination is an expedited form of individual refugee status determination. 'It is used when states lack capacity to conduct refugee status determination that includes regard for exclusion and non-inclusion from Convention protection'. (Refugee Survey Quarterly (2010) 29 (1): 61-91).

action plan on migration and asylum, organising training for officials, exchanging information on various issues (entry and stay, integration, Eurodac system, temporary protection, reception conditions for asylum seekers, detention of illegal migrants) and cooperation on reintegration of returned asylum seekers and illegal migrants and assistance to refugees (European Commission 2006). It also requested modernisation of the refugee system in line with international and EU standards referring to the principles of the 1951 Convention and the 1967 Protocol and strengthening the department for IDPs to improve their protection, assistance and integration (Williams 2011). Since the action plan, asylum system reform has also been addressed in the section of JFS cooperation in the country strategy paper 2007 - 2010 which stated that the ENPI will be paying attention to the development of an asylum system fully in line with European standards (European Commission 2007b: 39).

Asylum protection issues become especially important when countries that have signed readmission agreements may see an increase in the numbers of refugee and asylum seekers being returned from EU member states. This section will trace granting subsidiary protection, recognising the principle of non-refoulement and minimum standards for receiving/treatment of refugees which are at the core of all international and EU regulations as discussed in chapter two.

5.4.1 EU Conditionality, Assistance and Capacity and Technical Support

Apart from listing asylum system enhancement as one issue under the JHA section of the action plan, which would greatly contribute to Georgia's opportunity to benefit from visa facilitation, there were no specific incentives set in regard to asylum sector compliance before 2006 apart from mentioning asylum in the common visa facilitation document like the other JHA related issues. In the 'mobility partnership programme', increased mobility was promised in exchange for 'facilitating the reception and adaptation of asylum seekers', and concerning building capacity of the 'Georgian government to implement asylum policy' among other JHA issues. It was signed with Georgia in November 2009 (Council of the European Union 2009). Therefore, issue-specific incentives were low before 2006, medium before 2009 and high since then.

Most of the financial assistance was directed to IDP's in Georgia and totalled over €170 million¹¹⁴ from 1992 onwards. Asylum and refugee protection received very little financial assistance in comparison. The EU has been granting financial assistance since 2004 in the asylum sector in Georgia. Before the ENPI, the Aeneas programme funded an informed migration programme from 2005 for two and a half years focusing on Armenia, Azerbaijan and Georgia, with a contribution of €777,397 where the IOM acted as an implementation partner (Aiolfi and Charpin 2011). It focused on enhancement of 'legislation and national practices with regard to asylum protection' (Aiolfi and Charpin 2011). Furthermore, a 2-year project from the end of 2006 until the beginning of 2009 'toward Durable Re-Integration Mechanism Project' with an EC contribution of €511,354.37 and Danish Refugee Council as an implementation partner was launched (European Commission 2007a).

After the launch of the ENPI, financial assistance has increased. The EU-funded UNCHR implemented the 'Strengthening Protection Capacity' project initiated in 2007 with €800,000. In 2008 as a part of the sectoral support fund €6 million was given for the returned people with shelter and income generation projects and also safe and dignified repatriation for refugees and disabled persons (European Commission 2010). The financial assistance has in total been €1.3 million before the ENPI and after approximately €6 million.

The EU's role through other means is limited in the asylum sector. There are no directly involved EU agencies, TAIEX or Twinning programmes related to refugee and asylum seeker protection in Georgia. The EU has not launched regional protection programmes in Georgia like it has in Moldova and Ukraine. The only EU agency indirectly related to asylum protection is FRONTEX which created a cooperation agreement with Georgia in 2008. It aims to train, according to a common core curriculum, the border guards which may, therefore, support the sector through better recognition of asylum seekers and their treatment.

In sum, out of all the EU strategies, incentives have been present since 2005, assistance from 2004 onwards and low scale technical cooperation from 2008.

¹¹⁴ In 2009 €61.5 million was committed and another €50 million disbursed on decent living conditions and livelihood to all Georgian IDPs. Furthermore, €43.5 million, as a special measure in November 2009, was allocated for the socioeconomic integration of the IDPs (EU Progress Report for Georgia in 2010).

5.4.2 Domestic Conditions and Costs

Adoption of refugee and asylum protection standards respecting the principle of non-refoulement and offering subsidiary protection and minimum standards pose low costs because even if it requires amendments to or new legislation, there were no disagreements among the decision makers as usually issues related to human rights have been agreed on without any objections.¹¹⁵ At the public level it is not causing instability because even though asylum seekers come from diverse cultural, racial and religious backgrounds they are rarely targeted (UNHCR Gaps Analysis 2008). Therefore, political costs for adopting EU and international asylum standards are considered low.

Implementation costs in regard to offering alternative protection to refugees, minimum reception condition for refugees and non-refoulement are also low as there are very small amounts of refugees in Georgia (UNHCR factsheet 2011).

5.4.3 Macro and Micro Level External Pressure and Support

There is no other conditionality proposed by any other organisation even if many international organisations, most importantly UNHCR and the IOM, are promoting refugee and asylum protection standards and have had a longer established role in Georgia. Whereas the EU requests compliance with the EU and international standards in its action plan it does not specifically point out the differences between the UN and EU law. However, the 1951 UN Convention does not offer subsidiary protection and thus the EU regulation goes further to address the gaps for asylum seekers who need protection but do not fulfil the 1951 refugee definition. Thus, by tracing whether the ENP states also adhere to the EU standards on subsidiary protection that go beyond the UN standards give further understanding of their willingness to follow EU rules, because minimum standards and refoulement clause are covered both in the EU and the international regulations.

At the practical application level the main contributors are the UNHCR, the IOM and the USAID which support asylum protection through technical and financial assistance besides being implementation partners in the EU-funded projects. In addition to international actors and the EU there are also a variety of NGOs providing assistance on the ground such as Technical Assistance Georgia (TAG) which provides health care to refugees; the Georgian Centre for Rehabilitation of Victims of Torture (GCRT) which

¹¹⁵ Author's interview with an interviewee no. 34 and an interviewee no. 60, Tbilisi October 2010.

provides psychological counselling; the United Nations Association of Georgia (UNAG) which provides legal counselling, advocacy and training; and the Co-ordination Council of Chechen Refugees in Georgia which promotes local integration of refugees, information-sharing among refugees and awareness-raising about refugees' contribution to Georgian society (UNHCR Gaps Analysis 2008). Whereas the international organisations have contributed through capacity building to the legislative approximation matters the local NGO's have been supporting the asylum conditions on the ground.

5.4.4 Process and Extent of Formal and Behavioural Compliance

Refugee legislation began developing in Georgia soon after independence. The first step in recognising asylum seeker protection issues was when the Right of Asylum was included in the 1995 Constitution of Georgia and article 49 declared that 'foreign persons and stateless persons living in Georgia have the right and obligations equal to the right and obligations of citizens of Georgia with some exceptions envisaged by the constitution' (UNHCR Gap Analysis 2009). The 'Law on Refugees' was adopted on 18th February 1998. The Ministry of Refugees and Accommodation regarded that it widely recognised the principles on 1951 and 1967 and that it was based on Georgia's constitution (Shevardnadze 2001:5) and a year later in May 1999 Georgia ratified the 1951 Convention and 1967 Protocol. Even if Georgia has had a basic framework for refugee protection since 1998 when the law was created (IOM Gaps Report 2008) it still did not fully comply with EU or international standards either at the legislative or implementation levels.

Some changes to the law were made by the amendments of 2006 in regard to Law on the Status of Aliens and amendments in 2005 to the 'Law on Refugees', but they did not change enough to comply with the international or EU legislation and major problems in regard to the status of a refugee, principle of non-refoulement and minimum standards for protection still remain today both at the legislative and at the also implementation level.

Firstly, the Law on Refugees differed in its definition of a refugee and it has not yet introduced complementary forms of protection as previously most asylum seekers were granted refugee status on a '*prima facie*' basis (IOM Gaps Report 2008; Gabrighidze

2011). It also excluded a specific provision for the most vulnerable (UNHCR Global Appeal Update 2011).

Secondly, the principle of non-refoulement was not fully in line with the refugee convention or European convention on human rights as it did not include aspects of torture as principles of denying return and therefore violates the principal of non-refoulement at the legislative level.¹¹⁶

Thirdly, in regard to minimum standards of the refugees in Georgia there were some achievements in 2007 such as granting issuance of temporary residency permits to refugees as regulated by the 2006 'Law on the Status of Aliens' and on issuance of documents in April 2009. Thus, it can be concluded that at the legislative level refugee protection is not adhering to EU or international law in all aspects but there have been amendments for some provisions in recognising refugee rights according to minimum standards.

The practical application of refugee status, subsidiary protection, non-refoulement and minimum standards for reception also has deficiencies. Firstly, no other forms of protection were granted besides protection under refugee status. Moreover, some of those who had a refugee status, experienced a cancellation of their previously granted refugee status (IOM 2008a). This was done on the grounds that the Ministry of IDPs Accommodation and Refugees (MRA) saw that these people met conditions for acquiring Georgian citizenship, or were registered as citizens. However, due to poor registers in fact these individuals had failed to acquire it and were risked becoming stateless refugees.

Secondly, the fact that Georgian agreements cover most of the aspects of the principle of non-refoulement and also that the criminal code prohibits penalisation for illegal aliens entering the country, asylum seekers are in danger of refoulement due to lack of identification or the cancellation of their refugee status.¹¹⁷ As the law on refugees or on border police does not expect that border officers identify asylum seekers, they are referred to the investigation unit in the border police which is responsible for referring

¹¹⁶ *Law of Georgia 'On Refugees'* (as amended in 2005) [Georgia], 27 April 2005, available at: <http://www.unhcr.org/refworld/docid/44ab867a4.html>.

¹¹⁷ *Law of Georgia 'On Refugees'* [Georgia], 18 February 1998, available at: <http://www.unhcr.org/refworld/docid/3ae6b4e324.html>.

cases to the office of the prosecutor, rather than referring them to the MRA. Therefore, there are some cases where aliens are charged with illegal entry and risk a 3 - 5 year prison sentence for illegal entry and/or refoulement (UNHCR Gaps Report 2008).

Thirdly, most of the aspects of implementation of minimum standards of reception are lagging even if there are some improvements with an accommodation centre and identification documents sector. Even if the refugee law requires assistance for refugees in finding employment, it is not available to most refugees due to 'location and limited job opportunities' as they are situated in a remote area in the Pankisi valley. Moreover, in theory, schooling is available to refugee children in the Pankisi valley, however, as Russian language schools are unofficial, the school certificates are not recognised by other authorities, making it difficult to move into further education.¹¹⁸ Despite primary schooling there are no government-funded vocation programmes for refugees in the Pankisi valley.

Lastly, these previous issues directly related to location are unlikely to be altered in the near future. Those IDPs who are residing in Tbilisi are since 2010 been given new housing, which is on one hand a positive development as it gives them an opportunity to gain better conditions than they had before, in abandoned houses often with lack of running water or heating (IOM 2008), but on the other hand the new houses are built in remote villages where they indirectly undermine other refugee rights such as accessibility and possibilities for employment, schooling or healthcare (Kirtskhalia 2010). The replacement of the old accommodation has raised a question of violation of human rights when they started in December 2010 due to the forceful and short notice evictions from around 25 buildings in Tbilisi (Tskhvirashvili 2010). Continuous protests took place since late 2010 to draw attention to MRA practices which ultimately escalated in the dismissal of the MRA in March 2011 (Rustavi II News 23/05/2011).

Out of these basic standards the only success is regarded to be the issuance of travel documents which was started in 2009. It was an improvement on the situation as previously asylum seekers were not receiving formal documentation (European Commission 2010). Based on these issues it can be concluded that to date neither formal nor behavioural compliance has fully taken place, expect for improving

¹¹⁸ Ibid.

minimum standards including travel documentation issuance and improving accommodation conditions which are easier tasks to implement and the costs were covered to large extent by the EU in the accommodation centre and international organisations in regard to documents.

5.4.5 Conditions and Logic for (non)Compliance

5.4.5.1 Formal Compliance

The favourable conditions that were present from 2000-2011 were medium/high identification, high legitimacy, and low political and economic costs and support from international actors. There was low membership belief, low/medium credible benefits until 2009 and low EU related technical and capacity groups. Even if identification as well as legitimacy were in place, in the absence of clear incentives, low expectations for the EU membership prospect and low EU side technical cooperation, no change in legislation in regard to subsidiary protection or protection against refoulement have taken place. Compliance only took place in regard to issues at the minimum standards for protection level, which could be perceived to be an easy or more technical task, i.e. when ID document provision was set into legislation.

The lack of compliance, therefore, suggests to be stemming from the lack of capacity or political will. While adoption of a law does not require costly or complex procedures the lack of legal compliance in Georgia is likely to be emerging from lack of political will. Interviews suggested that asylum is not a priority area in Georgia as there are concerns more with the IDP's and also the officials perception sometimes is that asylum seekers are considered as criminals which does not give the issue needed urgency to tackle.¹¹⁹ As the EU has only intended to promote in the sector through the indirect incentive of increased mobility including also the sector of asylum system reform and some funding, the EU's leverage to influence is not enough. It was furthermore felt that the EU did not feel the need to be more involved.¹²⁰ In sum, the EU's leverage in the area is low and the compliance that has taken place has been IO driven and mainly involved UNHCR assistance.

¹¹⁹ Authors interview with interviewee no.11, Brussels, June 2011.

¹²⁰ Author's interview with an interviewee no. 60, Tbilisi, October 2010 and the interviewee no. 11, Brussels, June 2011.

5.4.5.2 Behavioural Compliance

Under the same conditions as legal promotion behavioural compliance was only partial as there were problems with offering access to asylum and also the principle of non-refoulement was not respected. The only successful changes that have taken place since 2009 are related to minimum standards of reception/treatment of refugees and asylum seekers and in regard to documentation and accommodation centres. On the ground conditions for refugees and asylum seekers improved due to the joint effort of international organisations. UNHCR support was important in providing documentation as it agreed with Civil Registry Agency to cover the costs of 5,000 Convention Travel Documents (CTDs), which are issued to all recognised refugees (UNHCR Gaps Report 2008). Accommodation centre was constructed with EU and international assistance (European Commission 2011b).

The reason for lack of behavioural compliance can also be explained by a lack of capacity due to the primary focus being on the IDP's and due to a lack of political will as Georgia did not consider it as a priority issue. In sum, the EU's influence in this case can be concluded to be low in regard to promoting the standards even if it assisted through temporary accommodation centre. It reflects the EU's own lack of interest in getting more involved the area demonstrated by lower incentives, funding and cooperation networks.

Table 5.3 Conditions for (non)Compliance-Protection of Asylum Seekers and Refugees in Georgia

Georgia	EU Membership Prospect	Identification with the EU	Clarity and Size of Issue-Specific Incentives	Financial Assistance	Technical Cooperation	Legitimacy	Political Costs	Economic Costs	External Pressures	Formal Compliance	Behavioural Compliance
Asylum	-	+/- since 2002 + 2002 since	- until 2005 +/- since 2005 + since 2009	- until 2004 + since 2004	-	+	+	+	+ IOs and NGOs since 1990s	+/- 2007 to 2009 IOs	+/- 2009 to 2010 IO and EU assistance on IDs, accommodation

*Low cost marked + (referring to a favourable element for compliance and vv).

5.5 Criminalisation, Prosecution and Punishment of Human Trafficking

Georgia is mostly a country of origin for trafficking of human beings. Instability in the region, deregulation of the borders and rising unemployment, especially affecting women as a consequence of the state reforms in the health and education sectors since independence, have contributed to victimisation (Glonti 2001). Weak borders in the secessionist conflicts' areas have further contributed to the number of trafficked. Also, street children have become vulnerable to human trafficking (Glonti 2001). Georgia is also a transit country for human trafficking but to a much lesser extent due to its underdeveloped transport system and geographical location. Most victims from Georgia are trafficked to Turkey even if evidence of trafficking from Armenia, Iran, Russia and Ukraine via Georgia to Turkey and the EU has also been found (IOM 2008a). IOM estimates that every year approximate 500 women in Georgia fall victim to trafficking (Corso 2006).

When the EU and international focus on Georgia's situation emerged in the late 1990's, Georgia's criminal code did not even contain a definition of human trafficking (Glonti 2001). Consequently, there were neither statistics nor court protocols on human trafficking. The lack of recognition of the problem and inadequate cooperation with law enforcement agencies in neighbouring states had resulted in a situation that the police were not equipped to deal with this crime (Glonti 2001).

The EU did not address human trafficking issues in its PCA in regard to Georgia; the first time it showed concern was in its country strategy paper of 2005.¹²¹ The action plan categorised human trafficking within organised crime issues in section 4.3.3. It recommended continuing implementation of the national action plan, implementing actions recommended by the OSCE action plan to combat trafficking in human beings¹²² focusing on Chapters III, IV and V¹²³ and to enhance cooperation in the framework of relevant international organisations (OSCE, UN). In addition, it suggested that Georgia promote co-operation regionally between law enforcement bodies (police, border guards, customs and judiciary) and develop protection, assistance and rehabilitation mechanisms for victims (European Commission 2006). These

¹²¹ Official documents in regard to Georgia were reviewed from PCA onwards (in Prelex and Comitology databases).

¹²² Approved in Maastricht, December 2003.

¹²³ Chapter III - Investigation, law enforcement and prosecution; IV - Prevention of trafficking in human beings IV and V. -to Protection and assistance. See Organization for Security and Co-operation in Europe, *OSCE Action Plan to Combat Trafficking in Human Beings*, 24 July 2003, Decision No. 557; PC.DEC/557, available at: <http://www.unhcr.org/refworld/docid/4a54bc2dd.html>.

recommendations demonstrate that despite having its own standards in the JHA *acquis*¹²⁴ in regard to human trafficking, the EU action plan for Georgia referred only to IO's standards for the fight against trafficking.

This section focuses on the fight against human trafficking and traces back the EU's influence in promoting criminalisation and punishment of trafficking in Georgia, which is covered in section III of the OSCE action plan. Compliance with the human trafficking action plan recommendations are regarded to have taken place when punishment of trafficking has been set into Georgian national legislation and prosecutions are carried out.¹²⁵ The time of punishment that the EU sets as a standard provides a comparative aspect on whether the countries follow the EU regulation even though the EU refers to the international standards in the action plans. In order to comply with the EU standards it would mean having a separate law which would have sentences similar to the EU and carry them out accordingly.

5.5.1 EU Conditionality, Assistance and Capacity and Technical Support

The EU action plan did not mention, in regard to compliance, any benefits apart from financial support which relates to all aspects of EU-Georgia cooperation.¹²⁶ Later, the Joint Declaration on a Mobility Partnership introduced the possibility for more mobility for Georgians in exchange for various security, organised crime and migration related issues, one of which is the fight against human trafficking (Council of the European Union 2009). Thus, the EU incentives were low as the EU did not mention any clear incentives for compliance before 2009 and medium since 2009.

The financial assistance that the EU allocated to Georgia for the fight against human trafficking was small. The first time Georgia received financial assistance addressing trafficking of human beings was in 2008 when €3 million was directed to all the United Nations (UN) member states. Georgia as an UN member received a part of this

¹²⁴ New directive made fight against trafficking applicable to all member states in March 2011. '*Human Trafficking: Commission welcomes Council adoption of stronger EU rules*', Brussels, 21 March 2011.

¹²⁵ An additional aspect to tracing the EU's influence can be seen in Georgia's reaction in amending the imprisonment period according to the EU's legislation.

¹²⁶ Even if in principle financial assistance is conditional, there has been only one case of withdrawing of assistance due to lack of progress in the ENP states. It was in Georgia in 2003 due to lack of effort toward corruption (Börzel *et al.* 2011). In addition interviewee in EuropeAid, June 2011 maintained that the EU is very reluctant to cease assistance even if there would be a lack of progress and only in cases such as Syria has it needed to do so.

assistance (European Commission 2008a). Most of the funding addressing the trafficking of human beings was allocated through implementation partners such as ILO and ICMPD in Georgia. There has been three EU funded projects that have been implemented by the international partners since 2006. The first was ‘Development of a Comprehensive Anti-trafficking Response in South Caucasus’; the second, ‘Strengthening of Comprehensive Anti-trafficking Responses in South Caucasus’¹²⁷ and finally, ‘Enhancing Development Impact of Migration in South Caucasus through Policy Dialogue, Capacity Building, Partnerships and Pilot Actions’.¹²⁸ Furthermore, Georgia was also included as one of the recipients of the EU funding between three countries of origin, transit and destination (Georgia, Greece and Ukraine) from 2007-2008 and implemented by La Strada and Human Rights Defence Centre and People’s Development Society Association.¹²⁹ It focused on three aspects: policy dialogue, illegal immigration and the fight against trafficking of human beings for which the EU contributed €1.1 million. In sum, EU funding has addressed the fight against trafficking with less than €5 million in Georgia. In comparison to other issue areas this area has received the lowest amount of financial assistance.

The EU programmes and agencies have not been involved in the fight against trafficking in Georgia. The EU TAIEX workshops and events in Georgia in regard to trafficking have only focused on drugs trafficking in 2007 and on firearms trafficking in 2011. Twinning projects have not been conducted in regard to addressing human trafficking in Georgia. In sum, most of the EU’s input is through its international implementation partners where the EU has been a funding provider since 2006.

5.5.2 Domestic Conditions and Costs

Georgia had no legislation that would criminalise trafficking in 2000 as criminalisation was operated on the basis of laws prohibiting slavery, forced labour, detention, kidnapping and rape, and the sentences handed down were from between 3 to 20 years (TIP 2000), which thus, the minimum sentence needed to be increased to five years in order to comply with the EU standards. The costs of adoption arose from the need for preparation of a law as it did not previously exist, however, as the human trafficking

¹²⁷ EC funding of €1,903,946.02.

¹²⁸ See: List projects contracted TP Cfp 2007 2008 + Direct Awards. Available at: [http://ec.europa.eu/europeaid/what/migration-asylum/documents/list_projects_selected_tp_2007_2008__2009_\(cfp_2007__2008+_direct_awards\)_for_publication.pdf](http://ec.europa.eu/europeaid/what/migration-asylum/documents/list_projects_selected_tp_2007_2008__2009_(cfp_2007__2008+_direct_awards)_for_publication.pdf).

¹²⁹ Ibid.

related issues did not face political challenges the decision the costs of adoption were medium¹³⁰.

Implementation of the legislation meant that it would face some costs as prosecutions were going to be carried out for the first time and as the process is continuous. However, as the amount of trafficking cases in Georgia are not that high (Corso 2006) the economic costs are considered to be low.

5.5.3 Macro and Micro Level External Pressure and Support

No conditionality was set by any international organisation or other country for promotion of the fight against trafficking, however, many international organisations have been engaging in Georgia already since the late 1990s through technical and financial assistance such as ILO, ICMPD, the OSCE, the IOM and US aid. IOM has been engaging in counter trafficking in Georgia since 2000. It has organised campaigns, training of officials for assisting safe return and reintegration (IOM 2008a). It has also been contributing to the national counter-trafficking action plan. ODHCR has assisted with the creation of national action plans for trafficking and ILO has been involved since 2007 fostering regional and international cooperation and focusing on prevention, protection and assistance of victims. Also, OSCE was involved in organising capacity building and networking, and supporting the development of legislation. It has especially facilitated cooperation at the legislative level by organising a working group of experts from GYLA (Georgian Young Lawyers' Association), international organisations, the General Prosecutor's Office, and the Ministries of Justice and Interior. They have cooperated in drafting amendments to the trafficking law (Sakiqi 2007). The US state department has been one of the main providers of financial assistance toward the fight against trafficking of human beings in Georgia (European Commission 2010).

5.5.4 Process and Extent of Formal and Behavioural Compliance

Human trafficking legislation began developing in Georgia in early 2000. At that time there had not been any trafficking arrests or a legislative framework to prosecute them. There was even confusion over which department was actually responsible for trafficking. For instance, the Ministry of Interior's anti-trafficking unit was focused on illegal adoptions rather than trafficking (TIP 2004). Furthermore, corruption levels were

¹³⁰ Author's interview with an interviewee no. 34, Tbilisi, October 2010.

high and it was not unheard of that government officials were themselves involved in the protection of traffickers (TIP 2001).

Due to the slow start in developing human trafficking law the IOM in 2001 suggested that it would be more beneficial to focus on amendments to the current Criminal Code as existing laws would suffice to tackle human trafficking rather than launching a new anti-trafficking law (IOM 2001). The suggestion was followed through when the Criminal Code of 2003 criminalised trafficking for the first time and which was followed by changes to prohibit trafficking in Article 143 and trafficking of minors in Article 172 (IOM 2008a). It provided penalties of 5-12 years imprisonment with a maximum of 20 years for aggravated circumstances.

The US also suggested the need for a fight against trafficking law and the same year drafting of the anti-trafficking law began.¹³¹ In 2006 Georgia adopted a Law on the Fight against Trafficking in Persons including provisions for punishments after a series of OSCE supported discussion (Sakiqi 2007). It also established a permanent Anti-Trafficking Council and the third action plan for trafficking (TIP 2007). In 2006 Georgia also increased punishments for traffickers. It amended the previous 2003 Criminal Code and established a minimum of seven years imprisonment and a maximum of 20 years and a life sentence in the case of minors being trafficked (TIP 2006). Besides setting punishment at the national legislation level according to international standards, it also ratified the Palermo Protocol to prevent, suppress and punish trafficking in persons and the Council of Europe Convention on Action against Trafficking in Human Beings. At the legislative level full compliance was recorded in 2006.

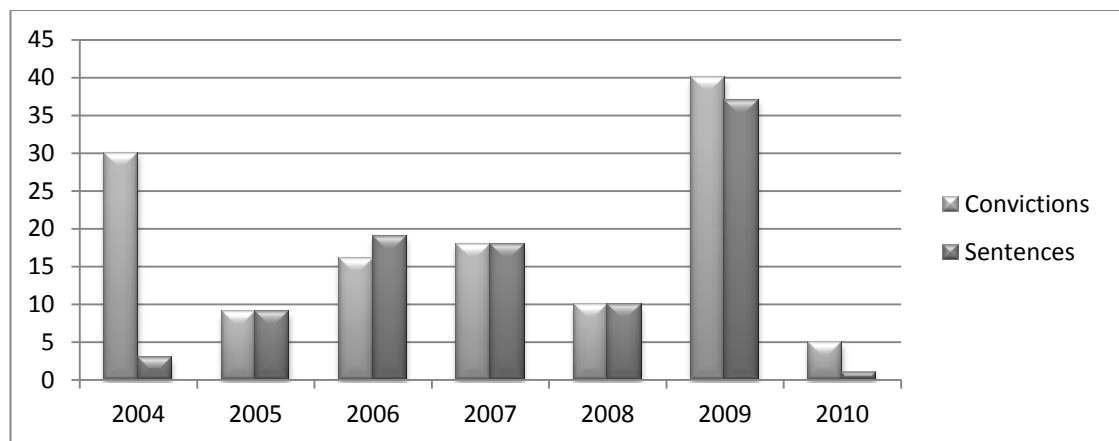
Impressive progress was also taken at the implementation level since 2005: a new anti-trafficking unit with a staff of 49 was established and in its first few months it investigated 13 cases and arrested 30 traffickers (TIP 2005; see table 5.1) demonstrating that prosecution was starting to take place. The average sentence which was given was also according to regulations and was 3 to 14 years imprisonment. Contrary to Moldova's difficulties in the prosecution of officials involved in trafficking, Georgia has also since 2004 taken action against complicit officials as demonstrated in August

¹³¹ Ibid.

2004 and February 2005 when three passport officials were arrested as they had been facilitating trafficking (TIP 2005).

Even if in 2005 there were some backward steps taken when there was a lack of progress in convicting and sentencing traffickers, the TIP reports from 2007 onwards show that Georgia has been prosecuting all the offenders. Furthermore, all the other aspects are working efficiently and there were no reports of trafficking-related complicity of law enforcement personnel from either NGOs or the government. The TIP report as a consequence categorised Georgia from then in the tier 1 section of countries, which signifies that it fulfils all the aspects in the fight against trafficking.

Table 5.4 Human Trafficking Convictions and Sentences in Georgia



Source: Author's constellation of available data from TIP Reports

Conditions and Logic for (non)Compliance

5.5.5.1 Formal Compliance

The conditions under which compliance took place in 2006 were low membership perspective, high identification, low EU incentives and low EU assistance. The costs were low both at legal and implementation levels, while legitimacy was high. Because the EU did not influence through assistance or support programmes before 2006 and as Georgia focussed on cooperation with the existing organisations and especially the US on trafficking issues, the likely reason for compliance in the human trafficking area is its cooperation with the USA, international institutions and the NGO's which already since early 2000 supported Georgia in developing its anti-trafficking system. There had been strong support and influence from the USA and Council of Europe and especially the statements made by the USA were very important in Georgia and they took them

very seriously.¹³² For instance, an interviewee contended that ‘Georgia had a strong relationship with the US and would trust their judgement in that if there was a needed change they would just accept it.’¹³³ In addition, an OSCE lead team was assisting in the drafting process of the law (Sakiqi 2007). Therefore, this case demonstrates that there was little role for the EU in the legal approximation level as Georgia received assistance and advice from OSCE and the US, which had had a long established role in Georgia, and therefore this case demonstrates the EU’s lack of influence.

Thus, the results indicate that the EU had little influence with the success in the criminalisation of human trafficking. The reason why the EU was not influential was its lack of contribution; evident in small amounts of funding and little institutional involvement. It was also doubted whether the EU was even interested as it would not benefit itself.¹³⁴ It was also felt that some EU states are behind Georgian standards and therefore the established international standards were seen as the framework to refer to.¹³⁵ While legitimacy and identification with the EU were high, the already stronger relationship between international organisations, the US and Georgia in trafficking related issues were the socialisation influences for Georgia rather than the EU. Thus, the logic that explains compliance took place because Georgia found it important to protect issues related to human rights¹³⁶ and because of capacity and socialisation related factors related especially to the US and international organisation assistance.

5.5.5.2 Behavioural Compliance

Behavioural compliance took place under the same conditions as formal compliance: low EU involvement through funding and technical cooperation groups with no incentive offered apart from the indirect incentive for mobility since 2009. The favourable conditions were high identification, low economic costs, and external assistance.

These three conditions cannot explain why there was a change from 2004 onward. Whereas external institutions were involved in the legal approximation level they did not directly have influence on implementation of the prosecutions and legitimacy. Level of identification and legitimacy had also been constant and is also not explanatory.

¹³² Author’s interview with an interviewee no. 71, and an interviewee no. 34, Tbilisi, October 2010.

¹³³ Author’s interview with an interviewee no. 34, Tbilisi, October 2010.

¹³⁴ Author’s interview with an interviewee no. 60, Tbilisi, October 2010, Tbilisi, October 2010.

¹³⁵ Author’s interview with an interviewee no. 38 and an interviewee no. 34, Tbilisi, October 2010.

¹³⁶ Author’s interview with an interviewee no. 34, Tbilisi, October 2010.

Therefore, at the behavioural level compliance was facilitated due to the increase of effectiveness of the prosecutor’s office itself, which was an independent body. The increased effectiveness seemed to coincide with justice sector reform. The reform was especially influential in cutting out corruption¹³⁷ which therefore can offer a causal explanation for increased prosecutions. Because justice sector reform was mostly conducted with the financial¹³⁸ and capacity building assistance of the EU (Delcour and Duhot 2011), the success in behavioural compliance can be accounted to the indirect EU capacity building influence.

Table 5.5 Conditions for (non)Compliance - Fight against Human Trafficking in Georgia

Georgia	EU Membership Prospect	Identification with the EU	Clarity and Size of Issue-Specific Incentives	Financial Assistance	Technical Cooperation	Legitimacy	Political Costs	Economic Costs	External Pressures	Formal Compliance	Behavioural Compliance
Human Trafficking	-	+/- until 2002 + since 2002	- until 2009 +/- since 2009	+/-	-	+	+/-	+	+ IOs, the US and NGOs since 1990s	+ 2006	+ 2007

*Low cost marked + (referring to a favourable element for compliance and vv).

5.6 Conclusion

This chapter discussed the EU approaches and domestic conditions and responses for approximation with the EU action plan recommendations in four selected issues of the action plan: border guard reform, readmission agreement, asylum protection and punishment for the crime of human trafficking in Georgia. The assessment considered compliance both at the formal and behavioural levels.¹³⁹

It found that out of the EU tools used only direct conditionality was given to two areas which were strategically most important for the EU’s own security: border management and readmission. They were also the areas which received most funding. In the asylum

¹³⁷ Author’s interview with an interviewee no. 25, Tbilisi, Oct. 2010.

¹³⁸ Ibid.

¹³⁹ See summary of results p. 223.

sector and human trafficking sector the EU's contribution was smaller in regard to the amount of financial assistance and lack of direct incentives and cooperation programmes.

Compliance took place at legislative and behavioural levels in three cases: border guard reform was fully complying with EU recommendation of transferring to a law enforcement agency and partially functioning as a professional service, readmission agreement was adopted and implemented and therefore compliant. Criminalisation of trafficking also complied with EU and international standards at both levels. The asylum and refugee protection only complied partially in regard to more technical issues.

Compliance took place regardless of the EU incentive and funding differences between the sectors. In border management formal compliance was motivated by NATO conditionality but the drafting of the law received assistance from the EU while motivated by reasons other than the EU's encouragement for reform, it was benefitting directly from EU help in drafting the law according to EU standards. In the readmission agreement case the EU incentive for visa facilitation was not enough on its own to trigger compliance with the readmission agreement before Russia's visa situation pressurised Georgia to adopt it. In the human trafficking sector the EU did not have a role in promoting formal approximation when Georgia found only the international regulations as its framework, however, indirectly the increased volume of prosecutions were benefitting from justice sector reform, which included a reform of the prosecutor's office, which was mostly thanks to EU funding and capacity building programmes.

Overall, the EU has not been on its own enough to motivate compliance with the EU standards in Georgia; however, it has improved the practical enforcement level by capacity related projects, which have contributed to the conditions on the ground.

Therefore, the EU's leverage in Georgia was limited to areas when Georgia's own reform plan coincided with the EU's assistance, rather than the EU being able to have leverage to influence solely.

6. The EU's Influence in the Area of JHA in Moldova

6.1 Introduction

According to estimations 40,000 Moldovans had intended to enter the EU illegally between 1999-2000, approximately 40 per cent of Moldovans were working temporarily or permanently outside Moldova and one million were based in the EU either legally or illegally (Gutu and Tomescu-Hatto 2005). Moldova's porous border, corrupt border guards and lack of attention to illegal migration and trafficking attracted more attention from the EU in early 2000 when the EU recognised that Moldova could pose soft security threats due to its position directly bordering the enlarged EU.

Before the preparation for enlargement, EU-Moldova cooperation did not address JHA issues but was focused on agriculture, public administration and the energy sectors.¹⁴⁰ The PCA only addressed the readmission agreement as a tool for illegal migration but did not include other migration related issues. When the ENP was launched, the JHA sector became one of the priorities.

This chapter focuses on the same four issue areas which are present in all of the three countries' action plans and examines Moldova's compliance with the EU standards from 2000 until the end of 2011. It finds that Moldova has been complying with most of the requested EU standards or committed to do so both at formal and behavioural levels within its capacity limits. It has responded to EU incentives of visa facilitation and overall its compliance can be explained by a rationalist logic as it is aiming to gain EU membership and benefits from visa facilitation and liberalisation.

These arguments are developed firstly by discussing border guard reform, followed by the readmission agreement, then asylum and refugee protection and lastly criminalisation of trafficking of human beings. The conclusion draws together the findings, the logic of the cases and the EU's role in promoting compliance with its standards both at formal and behavioural levels.

6.2 Border Guard Reform

After the collapse of the Soviet Union, the Moldovan border guards were established by presidential decree in June 1992 (BGS-Moldova 2010). The Moldovan Border Guard system focused on defence rather than facilitating movement and used conscripts

¹⁴⁰ Moldova-EU related data reviewed in Prelex and Comitology register since 1991.

instead of professionally trained border guards. The system suffered from severe corruption, a lack of capacity and low wages made conscripts vulnerable to bribery. Because border guards stayed on duty for only 1-2 years retention experience from previous training was difficult (Sushko *et al.* 2005). When the EU began paying attention to border management issues under its ENP action plan in 2005 it recommended Moldova to focus on the creation of an efficient and comprehensive border management system, including the transformation of the border guards into a law enforcement agency and to amend the national legislation accordingly (section 49). This meant demilitarisation of the service, the addition of investigatory powers for the professional staff and separating the service from the state security department. This section traces border guard reform according to EU standards set in the action plan.

6.2.1 EU Conditionality, Assistance and Capacity and Technical Support

In order to promote compliance with its recommendations in the action plan, the EU stated that financial assistance was conditional on commitment to the fulfilment of the PCA, however, it did not mention any direct benefits for border guard reform in the action plan (European Commission 2005). The common approach on visa facilitation however included a section on border management in 2005 thus creating an indirect incentive for visa facilitation. After the launch of the EaP in 2008, an increased potential for mobility was set up as a conditional incentive for increasing security in the border management sector. More specifically, through implementing ‘mobility security pacts’ and when efforts for corruption, organised crime and illegal migration were addressed including ‘upgrading asylum systems to EU standards and the establishment of integrated border management structures’ the EU promised easier legitimate travel (European Commission 2008b). However, just when the visa liberalisation plan was launched by the EU in 2010 and the plan having identified relevant conditions which needed to be completed through a process of dialogue set up after the Prague Eastern Partnership summit on 7 May 2009 the incentive was directly linked to visa facilitation. Therefore, while incentives were financial before 2005, medium until 2010, since 2010 they have been high as border management reform became conditional for the goal of visa liberalisation.

The EU has also exercised influence through its financial assistance. Tacis, regional funds and cross-border cooperation since 2000, until the ENPI pooled funding under one instrument in 2007, have been the main contributors of financial assistance in the

border management sector. In total it has been the highest funded area in the JHA (ECRE 2008) out of the four issue areas receiving financial assistance. Between 2000-2002 Moldova received only limited funding toward the border guard reform process. In 2000 €0.9 million was given through a regional fund for training Moldovan border guards and in 2002 under the Tacis fund €1.85 million was given to Moldova for equipment and training (European Commission 2001a).

However, since the EUBAM was initiated, funding has been increasing. EUBAM is an advisory body that was established after a joint letter from Moldova and Ukraine requested President Barroso and High Representative Solana to arrange support for border management (European Commission 2005a). EUBAM which has been operating on the Moldova-Ukraine border since October 2005 has received the largest bulk of the EU funding. The total amount so far has reached €68 million between Moldova and Ukraine.¹⁴¹ Particularly on the transformation on the Moldovan border guard in 2007 the annual programming allocated €11 million in total for a two year period through an EUBAM programme. Then in 2008, €10 million was allocated in order to bring the border guards and the asylum system fully in line with European standards according to country strategy paper 2007-2013 through ‘Improving Border and Migration Management in the Republic of Moldova’-programme. In total the EU allocated to the border management sector over the years €160 million.¹⁴²

The EU has also supported border guard capacity building through projects which are implemented by international implementation partners. The IOM and UNDP have been the main partners. IOM implemented programmes such as the €1.1 million project funded by Tacis and co-funded by IOM to improve training toward the European standards. In addition, ‘Capacity Building and Technical Cooperation’ project was carried out with a €900,000 contribution from the EU and was implemented by the IOM (European Commission 2007e). The UNDP project Bommoluk received €3 million to implement ‘improvement of Border Controls at the Republic of Moldova-Ukraine border’ from 2006-2008 and received additional funding of €6.6 million allocated until 2012.¹⁴³ The UNDP has also been working since 2004 to enhance border control

¹⁴¹ Author’s interview with an interviewee no. 57, Chisinau, June 2010.

¹⁴² Author’s calculation on the basis of national indicative papers and programme fiches available at EuropeAid.

¹⁴³ Author’s interview with an interviewee no. 57, Chisinau, June 2010.

through ‘Enhancing Border Control Management Programme’ with equipment and training fully funded by a Tacis project worth €1.85 million (Dubikaitis *et al.* 2005).

Despite financial and project based assistance the EU has also sought to influence through specialised agencies that were originally dealing with the candidate states but which have, since the launch of the ENP, also been available to the ENP countries. They have started supporting border guard reform in Moldova since 2008. One agency with a particular role in the border management sector is FRONTEX. Cooperation between FRONTEX and the Moldovan Border Guard Service has been taking place since August 2008 when a working arrangement was signed. It enables the Moldovan Border Guard Service to benefit from FRONTEX training tools, all funded by FRONTEX, such as the Common Core Curriculum¹⁴⁴ used for basic border guard and forgery detection training. FRONTEX also finances Moldova's participation in information exchange, risk analysis and other training activities (FRONTEX News 12/08/2008). In 2009 it trained 400 border guards (European Commission 2010b) and launched on 1 September 2010 training in accordance with FRONTEX's Common Curriculum. In addition, four TAIEX events have organised training for border guards focusing on document security since 2010.¹⁴⁵

In sum, the EU has influenced in the sector through conditionality for visa facilitation since 2009, through financial assistance since 2000 and to a lesser extent through FRONTEX (2008) and TAIEX workshops (2010).

6.2.2 Domestic Conditions and Costs

The Border Guard Department became independent already in 2000 through being removed from the Ministry of State Security and becoming directly controlled by the government (Dubikaitis *et al.* 2005). When the EU requested border guard reform, in the 2005 action plan, the border guard system was based on the law ‘Concept of State Border Guarding of the Republic of Moldova’ (Nr. 479-XV) (Official Monitor 2004) which was a component of national security. The status of personnel was regulated by a law ‘on the Military's Status’ (Law No. 162- XVI) and on the law on ‘Preparation of Citizens for Defending the Homeland’ (No.1245-XV) (Government Decision No. 1212,

¹⁴⁴ The Common Core Curriculum (CCC) was launched in 2007 and represents the first standardised set of skills and knowledge criteria for basic-level border-guard training in the EU. See: http://www.frontex.europa.eu/structure/capacity_building_division/training/.

¹⁴⁵ Taiex events are available at: <http://taiex.ec.europa.eu/>.

27/12/2002) meaning that both the agency and staff were still having a militarised status prepared for defence rather than facilitating mobility.

Under these starting conditions, political costs for border guard reform were high as the elite could not agree whether to include the border guard unit as an autonomous institution within the Ministry of Internal Affairs (MIA) or not (Litra 2011). The dilemma was that the MIA was under-reformed and could therefore reduce the speed of the reform process of the border guard service but if it were to be included it would give the service penal prosecution competence which was also a necessary requirement of reform (Litra 2011).

At the implementation level Moldova needed to train staff to a high standard rather than rely on conscripts which meant continuous and high economic costs. There were approximately 6,000 border guards in Moldova of which 50 per cent needed to become professional border guards (Sushko *et al.* 2005). Furthermore, economic costs would occur from the salaries of the staff employed when the conscripts were replaced by hired officers (Dubikaitis *et al.* 2005). Therefore, costs at the legislative level and implementation level were both high.

6.2.3 Macro and Micro Level External Pressures

In addition to EU conditionality, socialisation and capacity building techniques, international actors have also been involved in the enhancement of border management in Moldova but only on the basis of financial and capacity building assistance and without external pressure or conditional incentives.

NATO also included the task of reforming the border guards into a law enforcement agency in the IPAP section 2.7. However, its conditionality has not had a great impact on Moldova because Moldova has maintained that ‘the Republic of Moldova does not pursue the objective of NATO membership through the implementation of IPAP’ (NATO 2006). Therefore, only the international organisations’ capacity and financial assistance tools could have been explanatory factors for change in Moldova. The main organisations have been the IOM and the OSCE.

The IOM started its cooperation with the EU already in 2003 on a two year project, which focused on capacity building and assisting adherence to the EU standards. It used best practice European expertise to design and carry out training courses for about 150

Moldovan border guard officers which was part delivered by invited experts¹⁴⁶. They also compiled legislative acts into the first ever pilot hand book and provided training in the use of equipment and shared knowledge on converting to a European standards control system.

Apart from being an implementation partner for some EU funded projects, the OSCE has also provided training in its own projects such as a training programme organised for Moldovan officials in March 2011 in Dushanbe. In addition, an announcement was made in December 2011 about training courses which are initiated by the OSCE and will start taking place from 1st March 2012 onwards (Border Guard Service News 28/12/2011).

In sum, NATO has not been able to use conditionality in Moldova as the official stand has remained not to pursue NATO membership. The international organisations that are focusing on border guard reform have mostly been acting in cooperation with EU funding and focused on border guard training in cooperation with a multiple of actors through EU funded programmes and only a few programmes were conducted independently. Financially the only other external donor according to NIP 2007-2013 matrix for border management is the US.¹⁴⁷

6.2.4 Process and Current Status of Formal and Behavioural Compliance

The original legislative base for border guards was created in 1994 by adopting the Law on the State Border (Law 108-XIII). It dictated that the border guard service was to be subordinated into the Ministry of State Security and described the use of military troops for the state border surveillance and control.¹⁴⁸ In 1999 the border forces were transformed into the Department of Border Forces, however, they were not demilitarised as the border guard staff was regulated by Law No.1245-XV (18/07/2002) 'On Preparation of Citizens for Defending the Homeland'. The first stages towards demilitarisation were taken when the Parliament of Moldova adopted the 'Concept of the State Border Guard' on 4 December 2003 (Law 479-XV) which created objectives for its transformation from 2003 until 2007. The Concept's implementation envisaged

¹⁴⁶ The whole budget allocated was €1.1 million (Source: Dubikaitis *et al.* 2005).

¹⁴⁷ See donor matrix, available at:

http://ec.europa.eu/world/enp/pdf/country/2011_enp_nip_moldova_en.pdf.

¹⁴⁸ Revenco, R. 2010, *Interview on Europa Portal*, Interviewed by Iulia Munteanu, 27/12/2010.

the development of the system for border guards and the preparation of a draft law on the State Border Guard Service, which would fulfil the goals of becoming a law enforcement agency and demilitarisation of the border guards (Dubikaitis *et al.* 2005). It also noted that investigatory powers for border guards, that a law in 2001 had annulled, should be restored (Dubikaitis *et al.* 2005).

When the law ‘On the Border Guard Service’ (No 162-XVI) was adopted by the parliament on 13 July 2007 and came into force on 5 October 2007 (Government of Moldova 2008) it defined the border guard service as a law enforcement agency. While this law made the agency partly compliant with the EU standards, it did not grant it investigatory powers. Just when decision no.1212 from 27 December 2010 on the ‘National Strategy on Integrated State Border Management for 2011-2013’ was approved did it acknowledge that in order to comply with the EU law the ‘Law on Border Guard Service’ (No.162- XVI) would be amended to invest the border guard service with new powers such as the judicial expertise of travel documents and criminal investigation (Border Guard Service-Moldova 2010).

The envisaged amendment took place on 28 December 2011 when the Moldovan parliament adopted the Law on Border Police. It also maintained that border police powers will be extended and that in doing so it addresses the key aspects of the fulfilment of the action plan on visa liberalisation (MBGS News 28/12/2011). It also stated that border police officers will have the same criminal investigative rights as the Ministry of Interior, Customs or the Centre for Combating Economic Crimes and Corruption (CCECC) (European Commission 2012). Therefore, border guard reform at the legislative level complied with the EU standards in December 2011 and it is expected to be in force in July 2012 (MBGS News 28/12/2011).

At the practical application level, as the new law took place just recently it is not possible to assess its practical application and it is yet to be seen how it performs. However, in regard to phasing out of conscripts, work began in 2005 and aimed for completion within two years in the EU/UNDP supported programme but has not yet fully been completed (2011).

6.2.5 Conditions for (non)Compliance

6.2.5.1 Formal Compliance

Demilitarisation of the border guard system, granting of new powers and inclusion under the Ministry of Interior between 2007 and the end of 2011 were adopted into law and therefore the recommendation of reforming border guard complies fully at the formal level with the EU standards.

At the time of compliance the country-level conditions of strength of EU membership prospect had increased and EU integration expectations were at their height especially with the new government. Identification with the EU was at the time medium as it still formed its decision on the basis of needs rather than being loyal to a particular aspiration group. The issue-specific conditionality was high as the possibility for visa free travel became an incentive since 2010, including a visa liberalisation plan. The adoption of the new law was not economically costly even if political costs were high in regard to restructuring of the institutions. With the help of EUBAM, which was active since 2005, FRONTEX since 2008 and since 2003 international organisation's involvement compliance took place even under low legitimacy and high costs at the political levels. Because EU assistance had been in place together with the international organisations already since early 2000, the motivated government aiming for EU integration and also the visa liberalisation incentive triggered compliance with the EU standards. The rationalist logic can best explain compliance in this case.

6.2.5.2 Behavioural Compliance

Partial compliance in regard to organising training and phasing-out of conscripts has taken place since 2005, however, it is not yet fully completed. The conditions were the same as for formal compliance, however, in 2005 EU membership was not yet enthusiastically pursued under the Communist government and high economic costs were also present. Since 2007 training has taken place in a border guard training centre. High implementation costs have not stopped the process but have delayed it (European Commission 2009). Conscripts are reduced every year but due to a lack of financial resources they are only replaced in a ratio of one to one (UNDP 2005). Furthermore, the passing on training and experiences is complicated because it is difficult to motivate the staff to engage in new responsibilities when the average wage is €300 per month for

civil servants.¹⁴⁹ Despite this Moldova has demonstrated its commitment to the continuation of the process by committing itself to the adoption of National Integrated Border Management Strategy which was a clear sign that the introduction of EU standards in border management is an important priority according to Head of EUBAM, Udo Burkholder (EUBAM News 15/11/2010).

Thus, at the implementation level the high costs and lack of knowledge being passed on stopped timely compliance in training.¹⁵⁰ The solution would require further support for capacity as well as government commitment to the engagement motivation of the lower level staff that are responsible for the retention of knowledge by allocation of funds for the department and staff wages.

Table 6.1 Conditions for (non)Compliance: Border Guard Reform in Moldova

Moldova	EU Membership Prospect	Identification with the EU	Clarity and Size of Issue-Specific Incentives	Financial Assistance	Technical Cooperation	Legitimacy	Political Costs	Economic Costs	External Pressures	Formal Compliance	Behavioral Compliance
Border Guard Reform	+/- until 2009 + since 2009	+/-	- until 2005 +/- until 2010 + since 2010	- until 2000 +/- since 2000 + since 2005	- until 2005 + since 2005	-	-	-	IOM since 2003 OSCE 2011 US since 2007	+ 2007 to 2011	+/-

*Low cost marked + (referring to a favourable element for compliance and vv).

6.3 Readmission Agreement

Out of the total population of 4.2 million people, the Bureau of Statistics in Moldova estimates that there are around 600,000-1 million Moldovans abroad, while independent studies show that as many as 25 per cent of the economically active population works overseas (IOM 2008b). Of this amount only 80,000 are staying in the countries legally (Sander *et al.* 2005). Most common destinations for illegal migrants from Moldova are Russia, Ukraine and in the EU, Romania, Italy, Portugal, Greece and Spain (Jaroszewicz 2011). Moldova is also a country of origin of illegal migration and a country of transit. Most transit migrants are from the former Soviet Union territories (Rettman 2011). As

¹⁴⁹ Author's interview with an interviewee no.14, Chisinau, June 2010.

¹⁵⁰ Author's interview with an interviewee no. 62, Chisinau, June 2010.

part of the EU's strategy to fight against illegal immigration and also share the responsibility for it, the readmission agreement was first mentioned in the case of Moldova in Article 26 of the PCA: 'The Cooperation Council shall examine which joint efforts can be made to control illegal immigration, taking into account the principle and practice of readmission' (European Commission 1994:17). This section traces compliance with ratification of the readmission agreement and its practical application.

6.2.1 EU Conditionality, Assistance and Capacity and Technical Support

Even though the EU had already brought the readmission agreement into discussions in 1999 there were no developments in regard to it before the ENP was launched and when the action plan was negotiated. Visa facilitation was not mentioned in the action plan as an incentive for readmission agreement, however, the opportunity for visa facilitation was already clear to Moldova since June 2006 when President Voronin had a meeting on June 21-22 in Brussels with Franco Frattini, Vice-President and Commissioner for Freedom, Security and Justice and Commission officials, which resulted in the opportunity to open a readmission agreement for Moldova (Söderköping Process News 19/12/2006). Moldova also knew that it would have the incentive as the officials were already proactively following Western Balkan countries' road maps as models and were preparing for the readmission agreement before it was even set as an option for them as they knew what to expect from the EU.¹⁵¹ In addition, at this time the EU had started to treat readmission and visa facilitation as 'a package deal' and they were negotiated together right from the start (Kruse and Trauner 2008). In 2009 the implementation of the readmission agreement was also set as a precondition for the start of negotiations on visa free travel (Söderköping News 17/12/2009). The visa liberalisation action plan maintains that implementing readmission is an 'underlying condition for the continuation of the visa dialogue and is of paramount importance for the establishment of a sustainable visa-free regime' (European Commission 2010c: 2). Therefore, while incentives did not exist before 2006, since 2006 they were high for approximation of the agreement and since 2010 for its implementation.

EU financial assistance in readmission issues has been project-based with international organisations acting as the implementation agencies. The projects have been addressing the consequences of the readmission agreement concerning own citizens, stateless and

¹⁵¹ Author's interview with an interviewee no. 23 and an interviewee no. 46., Chisinau, June 2010.

third country citizens. From 2005 onwards the Migramol Project, implemented by IOM with Tacis funding of €700,000, established temporary accommodation centres for migrants. Following this a three year project from the beginning of 2006 until the end of 2008 called ‘Consolidation of Migration Management in Moldova and Belarus’ (Migramol-Migrabel) donated a total of €755,000 to build capacity for protection of irregular migrants. In addition, a thematic programme amounting to €7 million in total was also allocated for Ukraine, Moldova and Russia to support the ‘implementation of readmission and visa facilitation agreements signed with eastern European countries’ (IOM 2006). While no assistance was made available by the EU between the years 2008 - 2010 in the readmission sector, in July 2011 SIREADA ‘Implementation of EC Readmission Agreements’ project was launched with IOM support. It focused on voluntary return and reintegration for two years with a total of €467,652 funded partly by the EU and the Austrian Development Agency (ICMPD). It was the first project addressing reintegration needs as before project funding had been focusing on the transit migrants. Thus, on average Moldova was benefitting from €4.4 million assistance in the readmission related sector. In comparison to other issue areas it is rather low as the border management area benefited from €37 million, asylum sector from €8.2 million and counter trafficking from €3.4 million.

In addition to rather small financial assistance allocated to the sector by the EU, there have been no TAIEX events in regard to readmission agreement implementation.¹⁵² Twinning cooperation did not either take place.

In sum, the EU’s main tool was the visa facilitation incentive to encourage the adoption of the readmission agreement and financial assistance to address the implementation aspect of readmission in absence of other types of governance tools.

6.2.2 Macro and Micro Level External Pressures

The EU has been the only actor offering conditional incentives to facilitate Moldova’s commitment to the readmission agreement. However, as in the case of Georgia, because the Russian visa facilitation agreement has been in force before the Moldovan agreement those who lived in Transnistria and had Russian passports (70 per cent of

¹⁵² See list of Taix events, available at: http://ec.europa.eu/enlargement/taix/dyn/taix-events/library/index_en.jsp?EventTypes=&LibMonths=&LibCountries=72&Keywords=&Speakers=&submit=Submit.

population) had an advantage over the population of the west side of the river to have easier access to the EU (EU-Moldova Parliamentary Cooperation Committee 2011). This scenario could be a factor in maintaining the frozen conflict rather than supporting a resolution, which is mainly surviving due to the fact that the Moldovan side has not been attractive to Transnistrians in the first place (Popescu 2005). Consequently, in order not to continue to do this, the conclusion of the visa facilitation agreement with the EU was especially important to Moldova.

Besides EU efforts and external pressures at the domestic level the consequences of the agreement have not benefited from international organisations involvement except that REVIS Project has been supported by the IOM and ICMPD as implementation and funding partners respectively.

6.2.3 Domestic Conditions and Costs

As in the case of Georgia, political adoption costs were low as readmission was unilaterally agreed upon as it was felt that it was the only way to guarantee visa facilitation.¹⁵³ Furthermore, after 2008 and when the political change was taking place in Moldova the new leadership saw that visa facilitation was the most important step for the country to get closer to the EU.¹⁵⁴ The costs are medium for implementation of readmission concerning third country nationals, as Moldova is not, to a large degree, a transit country (Calun 2007), however, on the ground the allocation of space for accommodation centres, reintegration programmes and voluntary return programmes demand continuous economic costs and use of resources.¹⁵⁵

With reference to own nationals the economic costs of readmission are the highest of the three countries. Moldova has 25 per cent of its population outside its borders. This would first of all mean strong pressure for a country where unemployment is high and, secondly, it would be highly influencing the wellbeing of many Moldovans as it is one of the countries with the highest dependency on remittances with 87 per cent of the remittances coming from Europe (UNDP 2009). With remittances from migrants estimated at up to 30 per cent of GDP (\$1.8 billion) they constitute a major source of

¹⁵³ Author's interview with an interviewee no. 54 and an interviewee no. 62, Chisinau, June 2010.

¹⁵⁴ Author's interview with an interviewee no. 54, Chisinau, June 2010.

¹⁵⁵ Author's interview with an interviewee no.11, Brussels, June 2011.

income for the people whose relatives have left Moldova and in general for the national economy (IOM 2008b).

6.2.4 Process and Current Status of Formal and Behavioural Compliance

The negotiations on visa facilitation and readmission started in February 2007 and after eight months of negotiations the EU signed on 10 October 2007 visa facilitation and readmission agreements with Moldova, with both agreements entering into force on 1 January 2008 (Kruse and Trauner 2008). The readmission agreement clause on return of third country nationals entered into force in November 2009 (European Commission 2010b) and the request can be considered to be complied with at the formal level.

Moldova has already concluded implementation protocols with a large number of EU member states and also engaged in negotiations for future conclusions (European Commission 2011b:5). It has also started completing readmission agreements with countries beyond the EU to facilitate return. Russia, Bosnia and Montenegro are in the process of completion and Serbia has already been completed (European Commission 2011b:5). A detention centre opened in 2009 after legislation approved accommodation for irregular migrants (European Commission 2009). In 2010 illegal nationals were placed in the centre and in 2011 the Commission progress report found the situation progress to be positive (European Commission 2011b). In 2008 the Moldovan government passed the national return plan for reintegration of returning migrants and already 350 migrants have been helped so far. In sum, implementation has been complaint at all the four levels. Therefore, addressing the implementation level and practical consequences of the agreement can be considered to have taken place since 2009 and is compliant with the EU action plan request.

6.3.5 Conditions and Logic for (non)Compliance

6.3.5.1 Formal Compliance

The readmission agreement was signed under country-specific conditions of high strength of membership prospect and medium identification and at the issue-specific levels under high benefits since 2006. Other present conditions included low costs for formal compliance, low legitimacy and low external involvement until 2010 and external pressure from the necessity of having visa facilitation to counterbalance Russia's visa facilitation agreement. Therefore, the favourable conditions present were the visa facilitation incentive and membership prospect when compliance took place.

Lack of legitimacy of the demand and low support for implementation did not prevent compliance.

The high strength of the EU membership prospect was not enough to encourage change on its own as it had already before been present and therefore the EU's incentive of visa facilitation holds importance as an explanatory factor for compliance. However, it is also unlikely that visa facilitation would have been enough to elicit influence on its own as previously visa facilitation had not been a strong enough incentive when the Mediterranean states of the ENP, which do not have even the slightest membership prospect or identity with the EU, had not managed to conclude a deal with the EU.

Thus, it indicates that the combination of the importance of European integration expectations and visa facilitation were in conjunction able to overcome the prohibitive associated costs. This case demonstrates the EU's successful role in a country which has an expectation of their membership accession and a recipient of a short term clear incentive and is best explained by a rationalist logic.

6.3.5.2 Behavioural Compliance

The readmission agreement came into force in 2008 and meant that from then onwards Moldova was responsible for its implementation. The conditions from the time when the agreement was signed changed when the new government emerged in 2008 and announced their priority to be European integration which was backed up by a consensus to pursue it. Also, a large range of support programmes were initiated at the end of 2009 toward supporting implementation of the agreement with the help of implementation agencies. Economic costs increased as the tasks created continuous costs.

The favourable conditions were membership belief, medium level identification, high incentives, as the visa liberalisation goal was also launched in 2009. Also EU technical assistance was available on the ground to support the human rights aspect of the implementation. The lack of EU agencies or international organisations and low legitimacy of the request did not prevent it.

All of the four conditions studied at the implementation level were fulfilled: signing implementation protocols, temporary accommodation centre, reintegration programmes, bilateral readmission agreements, even if two of them were reflecting more the EU

interest and the two latter were only also beneficial to Moldova itself. The reason for partial compliance depended from the political willingness which could have risen from the high expectations for EU membership but also lower costs than in larger countries. When comparing Moldovan experiences to Ukraine, which also had a clear incentive for visa liberalisation, it was found that the factors which were beneficial for Ukraine itself were only complied with whereas Moldova complied with all of the recommendations. This case is therefore explained best by the rationalist logic.

Table: 6.2 Conditions for (non)Compliance - Readmission in Moldova

Moldova	EU Membership Prospect	Identification with the EU	Clarity and Size of Issue-Specific Incentives	Financial Assistance	Technical Cooperation	Legitimacy	Political Costs	Economic Costs	External Pressures	Formal Compliance	Behavioural Compliance
Readmission	+/- until 2009 + since 2009	+/-	+ since 2006 + since 2010	- until 2005 + since 2005	-	-	+	-	Russia visa facilitation 2007 IOM, ICMPD	+	+

*Low cost marked + (referring to a favourable element for compliance and vv).

6.4 Protection of Asylum Seekers and Refugees

Moldova is mainly a transit country and to a very small degree also a country of destination for asylum seekers. Most asylum seekers originate from Turkey, Jordan, Sudan, Armenia and Lebanon even if there are applications from over 30 countries (UNHCR 2011b). The transit refugees come from Armenia, Azerbaijan, Chechnya, the Middle East, and from African countries.¹⁵⁶ On average Moldova receives 80-100 asylum applications annually and in 2011 there were 148 refugees and 81 asylum seekers in Moldova (UNHCR 2011b).

The first time the EU became involved in the asylum sector was when it launched the ENP as neither the PCA nor any other cooperation document made reference to asylum issues in Moldova prior to this. The main challenges at that time were weak socio-

¹⁵⁶ Colun, M., 2007, *Most refugees regard Moldova as transit country*, Interviewed by Infotag, 31/10/2007.

economic rights of refugees, local integration opportunities (ECRE 2008) and very slow progress with the implementation of refugee law (ECRE 2006). Especially access to interpreters and a free legal service, lack of provision for housing and integration into the labour market were recognised (ECRE 2008). Moreover, there was evidence of low recognition rates of asylum determination claims and lack of training among officials who come into contact with asylum seekers (ECRE 2008).

Consequently, the action plan objectives included in the asylum and refugee sector (section 46) are implementation of Moldova's National Action Programme on Migration and Asylum Issues; approximation of Moldovan legislation to the EU norms and standards; implementation of the 1951 UN Convention and the 1967 Protocol relating to the status of refugees, including the right to seek asylum and respect for the principle of non-refoulement (European Commission 2005). In addition, it requested the approximation of state authorities responsible for realisation and implementation of legislation on asylum and refugees to EU norms and standards (European Commission 2005).

This section assesses the formal and behavioural compliance with the asylum protection issues and considers them to be compliant when Moldova has incorporated into its national legislation opportunities for protection beyond the refugee status i.e. subsidiary or complementary protection, the principle of non-refoulement and minimum standards for protection on the ground, including accommodation, education, opportunities for integration and travel documentation and when it implements them accordingly.

6.4.1 EU Conditionality, Assistance and Capacity and Technical Support

As in the case of Georgia, the EU recommended approximation of Moldova's asylum system with its own and international standards in its action plan even if its *acquis* also has sections on asylum protection. The action plan did not mention conditional incentives, however, the common approach for visa facilitation in 2005 also outlined the asylum sector in the list of issues which it considered before opening up visa facilitation negotiations with the third countries. Otherwise there were no clear incentives set in any documentation between the EU and Moldova. Therefore, EU conditionality was low until 2005, medium until 2010 and high from 2010 onwards when the visa liberalisation action plan again maintained that visa free travel would only be possible upon strengthening asylum policy.

Moldova did not receive financial assistance from the EU for the asylum sector before 2004 as evidenced in the 2002-2006 NIP and programming documents.¹⁵⁷ Financial assistance for asylum related issues was made available as stated in the Country Strategy Paper 2004-2006 and the indicative programme for 2005-2006 and since Aeneas.¹⁵⁸ It was delivered through the thematic instrument Aeneas before the ENPI. The funding was project-based and projects were implemented by international organisations. Five projects took place in total from 2005-2007 before the ENPI, which were mostly multi-country programmes with Moldova being one of the beneficiaries.

The first project was directed towards Belarus, Moldova, Ukraine and Russia, called the 'Protection of Refugee Asylum Seekers and Forced Migrants' and was supported with an EU contribution of €529,705 and which used ECRE as an implementation partner from 10 December 2005 for three years. The second programme 'Strengthening Asylum Systems in Ukraine and Moldova' saw the EU contributing to basic needs such as accommodation and health care for irregular immigrants with a total budget of €1.6 million and was implemented between April 2004 and November 2005. Thirdly, in 2005 Tacis provided €700,000 for a Migramol Project implemented by the IOM to establish a temporary accommodation centre for migrants in Moldova. Fourthly, in 2006 asylum protection also benefitted from €500,000 funding through an Aeneas project directly in Moldova with implementation partners being Save the Children, Migration and Asylum Bureau, the UNHCR Moldova, Charity Centre for Refugees and Society for Refugees. Lastly, the ECRE, the IOM and the ICMPD have acted as implementation partners with the EU funded programmes in 'Protection of Refugees Asylum Seekers and Forced Migrants' which was implemented between 2005-2009, with an EU contribution of €705,311. In total the financial allocation was around €6 million before the ENPI launch.

After the ENPI, from 2009 onward a project called 'Monitoring Safe and Dignified Return and Conditions of Detention: Protecting the Rights of Asylum Seekers, Refugees and IDPs in Belarus, Moldova, the Russian Federation and Ukraine' was launched with

¹⁵⁷ National indicative programmes and thematic programming documents reviewed since 2001.

¹⁵⁸ As much of the assistance was given through thematic programmes covering more than one country in each programme, it is not possible to give exact amounts of funding in the case of any particular country, however, I will equally divide the amount in that case between recipients to provide an indication of the approximate sum which allows comparison between issues and countries.

€647.381.98 funding and ECRE as an implementation partner.¹⁵⁹ In neither 2010 nor 2011 did the asylum sector receive financial assistance under either the ENPI or thematic section. Therefore, the total amount of financial assistance was approximately €8.2 million and in comparison to other areas in Moldova asylum has received more than readmission or human trafficking but less than border management.

Besides financial assistance the EU agencies were also involved directly since 2009 in facilitating technical and capacity assistance operated through its own regional protection programme, TAIEX and Twinning programmes and its agencies of FRONTEX and Europol. The EU initiated a Regional Protection Programme (RRP) in Moldova on 16 September 2009 and allocated €400,000, which was intended to increase the capacity of authorities and the civil society to strengthen access of persons in need of protection. It has been implemented with the help of UNCHR. The EU projects under TAIEX in the area of asylum have taken place just since 2009. Two expert missions and one study visit on the reception of refugees and integration of refugees have been organised so far.¹⁶⁰ Twinning has also contributed with two programmes in the asylum field called ‘Enhancing the Asylum Conditions and International Protection in the Republic of Moldova’ from 2008 until 2011 and ‘Local Integration of Refugees in Belarus, Moldova and Ukraine’ (Andrysek and Rantala 2008). The EU’s direct influence through its agencies such as FRONTEX and Europol is limited in the area of asylum and refugee protection as their role has focused mostly on the prevention of illegal immigration even if they also contribute to information exchange, capacity building and training on border practices.

In sum, EU conditionality was low before 2005, medium until 2010 and high since then. EU financial assistance was allocated to Moldova since 2004 and EU agency involvement took place just after 2009 and therefore conditionality and financial assistance were the main tools for the EU to exercise influence.

¹⁵⁹ See the List of Tacis projects. Available at [http://ec.europa.eu/europeaid/what/migration-asylum/documents/list_projects_selected_tp_2007_2008__2009_\(cfp_2007__2008+_direct_awards\)_for_publication.pdf](http://ec.europa.eu/europeaid/what/migration-asylum/documents/list_projects_selected_tp_2007_2008__2009_(cfp_2007__2008+_direct_awards)_for_publication.pdf)

¹⁶⁰ Moldova Score Card 2010 made available by a Representative of Mission of Moldova to the EU, Brussels. June 2010.

6.4.2 Macro and Micro Level External Pressures

Even if the EU was the only actor able to use incentives in Moldova in regard to asylum sector reform recommendations, many other actors are also cooperating on the EU funded projects. The UNHCR, the IOM, the ECRE and local NGOs have an important role both at the legal approximation level and implementing asylum protection according to international standards in joint cooperation projects.

The UNHCR has the most active role in asylum protection in Moldova. In addition to implementing the EU regional protection programme, it has since 2003 also been responsible for producing statistics about refugees and asylum seekers until Moldovan officials took over (UNHCR 2011c). It assisted, together with the civil society, the elaboration of a law on asylum, which was adopted in December 2008 (UNHCR 2011c). In addition, it has committed to monitoring that asylum seekers have access to asylum procedures since UNHCR signed a Memorandum of Understanding with the Border Guard, Bureau for Migration and Asylum and the Law Centre for Advocates-NGO for joint protection monitoring.

Moldovan and international NGOs have got involved in supporting refugee conditions on the ground through implementing the ‘Monitoring Safe and Dignified Return and Conditions of Detention’ which employs ECRE and ten NGO partners from Belarus, Moldova, Ukraine and Russia and is funded by ENP Migration Thematic programme for 2009 and 2010.

6.4.3 Domestic Conditions and Costs

The domestic costs for legal approximation in Moldova were low as the asylum protection law did not require complex institutional changes but rather just passing a law addressing a wider scope of protection. It did not challenge the stability of the state as there was a consensus between the officials for asylum sector improvement. Among officials it was perceived that if the EU suggested something in regard to asylum sector to Moldova it was felt that it was a good idea and no controversial view was taken.¹⁶¹ In addition, the security environment for refugees and asylum-seekers is favourable in Moldova (UNHCR 2011c) and therefore does not cause extra pressure on the government to address consequences at the population level.

¹⁶¹ Author’s interview with an interviewee no. 11, Brussels, June 2011.

The implementation costs are medium. Moldova is not a primary country for transit for asylum seekers and as mentioned above since 2003 only 80 to 100 persons have applied for asylum annually (ECRE Annual Report 2007). However, since the readmission agreement came into force it could potentially increase numbers of asylum seeker applications in Moldova (Kruse and Trauner 2008). This meant that more resources and more staff were required which were capable to deal with applications and integration possibilities.¹⁶²

6.4.4 Process and Current Status of Formal and Behavioural Compliance

Moldova started the development of its asylum system very late; it did not have any official system for dealing with refugees before 1999 (Jandle 2003). Moldova entered the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol just on 1 May 2002 and 31 January 2003 respectively (ECRP 2009). It also took until 10 May 2001 before the first draft on ‘Law on Refugees’ was examined and approved by the Parliament in its first reading. On 25 July 2002 the parliament of Moldova adopted the ‘Law on Refugee Status’ which entered into force on 1 January 2003 and it was just considered to be better than no law at all as, for instance, it did not make reference to humanitarian protection or the issue of non-refoulement.¹⁶³

However, some provisions were subsequently set to address the conditions of refugee protection. Government decision no. 71 on 30 January 2004 decided on the creation of an accommodation centre. In 2005 humanitarian protection, which is a complementary form of protection, was introduced in the national legislation (UNHCR 2011). Then on 28 June 2005 the Moldovan government passed a resolution on refugee documentation which required issuance of identity cards to refugees and their children for a period of five years and travel documents for one year to those with humanitarian protection status (ECRE 2006).

Just in 2008, when the new law no. 270-XVI replaced the ‘Law on Refugee Status’ from 2003 was Moldova satisfying most of the EU and international standards. The law no. 270-XVI provided for access for asylum and in article one also for protection beyond refugee status in the form of humanitarian and temporary protection and political asylum. In addition it provided for laying the minimum standards for the

¹⁶² Ibid.

¹⁶³ Law on Refugee Status 2003. Available at: www.undp.md/border.

reception of asylum seekers, however, non-refoulement was not totally up to EU standards.

Firstly, the wording was similar in terms of humanitarian and temporary protection to that which was also in the EU *acquis*:

‘humanitarian protection is a form of protection, recognised by the Republic of Moldova, granted to a foreigner or a stateless person for other reasons than the ones provided for by the Geneva Convention of 28 July 1951’.

The temporary protection in Article 1 maintained that it applies:

‘in the event of a mass and spontaneous influx of displaced persons who are unable to return to their country of origin, immediate and temporary protection to such persons, if there is a risk that the asylum system will be unable to process that influx without adverse effects for its efficient operation, in the interest of the persons concerned and other persons in need of protection’.

Secondly, article 11 covered the principle of non-refoulement, however, it is still lacking at the legislative level and further amendments are required as it currently permits ‘refoulement or exclusion of persons on broader grounds than the 1951 Convention allows’ (UNHCR 2011:3).

Thirdly, in regard to minimum standards for the reception of asylum seekers, the second visa free travel progress report found that the new law on asylum is in accordance with the Council Directive 2003/9/EC of 27 January 2003.

At the practical level only partial compliance has taken place. Firstly, asylum seekers have been granted access to Refugee Status Determination (RSD) procedures and therefore is compliant (UNHCR 2011a). Secondly, respect for the principle of non-refoulement was suffering because of the quality of RSD interviews and assessment limitations, for example, UNHCR found that some assessments lacked structural logic and an evaluation of credibility (UNHCR 2011a). There is a lack of translators which makes determination difficult.¹⁶⁴ Therefore, non-refoulement in practice still needs to be enforced (UNHCR 2011a). Thirdly, detention centres are working well and most of the refugees and asylum seekers live in the accommodation centre outside the city centre (UNHCR 2011b). The first one opened in 2005 (ECRE 2006) with the help of UNHCR and the EU Tacis programme. The second refugee centre opened in 2007 and according to the UNHCR report, since the upgrading of the accommodation centre in 2010, meets

¹⁶⁴ Author’s interview with an interviewee no. 11, Brussels, June 2011.

the needs of accommodation in Moldova according to international standards and therefore can be considered compliant (UNHCR 2011b). However, opportunities for integration face challenges at some levels. While access to healthcare and schooling is provided,¹⁶⁵ employment possibilities remain limited because unemployment is also a problem for Moldovans¹⁶⁶ and the language barrier further prevents opportunities to find employment (UNHCR 2011b).

6.4.6 Conditions and Logic for (non)Compliance

6.4.6.1 Formal Compliance

Moldova complied with the EU asylum protection standards between 2004 and 2008 through adding temporary accommodation facilities into legislation in 2004 and adopting a new law (270) which recognised subsidiary and temporary protection in legislation in 2008. Moldova was then largely in line with the international regulations apart from the principle of non-refoulement.

The favourable conditions for compliance at the formal level were medium/high membership perspective and medium identification with the EU, financial support, legitimacy, other organisations' involvement and low costs. The reform had already taken place in regard to the accommodation centre before the EU expressed its concern. As the EU did not offer any direct conditionality yet in 2005 and as the assistance was focused on implementation and technical cooperation starting just in 2008 (de Wekker and Niemann 2009) the only favourable conditions were a macro level condition of membership belief, medium identification and external influence by the IOs. The issues of asylum protection had already been long on the agenda of UNHCR even before the EU had become involved. Moldova asked UNHCR to help it to introduce an asylum system in 1997 (UNHCR 2004) and in fact were in the process of assisting in the drafting of law, which demonstrates that achieving formal compliance was helped with UNHCR support rather than EU influence.

While non-refoulement is not yet complied with, the government promised that it will comply with it in conjunction with adopting other EU visa liberalisation issues. It demonstrates that the visa liberalisation incentive has been able to trigger compliance with a more complex issue which was not previously complied with. Issues that were

¹⁶⁵ Ibid.

¹⁶⁶ Ibid.

more technical and where there were international organisations involved were successful even without the incentive. Thus, formal compliance can be explained by international assistance and low costs.

6.4.6.2 Behavioural Compliance

At the practical level progress took place in regard to travel documentation in 2007 and the elevation of the accommodation centre to international standards in 2010. However, non-refoulement and local integration is still lacking.

Other conditions were the same except that Moldova also benefited from financial and technical assistance and in 2010 visa facilitation was expressed for the first time in connection with asylum system enhancement. Also, the costs were higher for implementation.

Implementation only took place in cases where there was assistance available and issues were less complex. The accommodation centre was to a large extent financed and created through international implementation agencies and EU funding. The experiences from the centre's functioning are very positive on the ground.¹⁶⁷ Moldova takes asylum system reform issues seriously and the areas where it had the needed support prevailed. An expert who had visited the accommodation centre told that 'It is in a perfect condition, the staff are very proud of it and everything works successfully'.¹⁶⁸

The implementation of the non-refoulement clause fell short due to lack of capacity. There was not enough expertise to carry out determination procedures and also due to language difficulties they were not always addressed adequately.¹⁶⁹ In addition, local integration and employment were difficult to organise when the country itself suffers from unemployment and housing issues due to lack of resources.¹⁷⁰

While behavioural compliance was lacking overall the achievements demonstrate Moldova's willingness to address the issues. Moldova demonstrated commitment for reform and as an interviewee argued the attitude in Moldova was that 'if we do this we will get benefits from the EU'¹⁷¹. In comparison, interviewee suggested that Ukraine

¹⁶⁷ Author's interview with an interviewee no. 11, Brussels, June 2011.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

was expecting to have the benefits even without compliance.¹⁷² However, due to lack of capacity the international organisations and the EU still end up doing the things for Moldova which it should do for itself¹⁷³. The accommodation centre was funded by the EU and UNHCR has been addressing the non-refoulement issue by organising study trips to help to develop protection sensitive entry system in regard to reception of asylum seekers (European Commission 2012). In sum the EU's influence in the asylum sector was low before the visa liberation incentive. However, at the behavioral level it has contributed to capacity building. The case however demonstrated that there was a domestic drive for change as Moldova had committed to pursuing EU membership in the future and tried to achieve compliance at all levels where there was enough capability to do so.

Table 6.3 Conditions for (non)Compliance: Protection of Asylum Seekers and Refugees in Moldova

Moldova	EU Membership Prospect	Identification with the EU	Clarity and Size of Issue-Specific Incentives	Financial Assistance	Technical Cooperation	Legitimacy	Political Costs	Economic Costs	External Pressures	Formal Compliance	Behavioral Compliance
Asylum	+/- until 2009 + since 2009	+/-	- until 2005 +/- since 2010 + since 2010	- until 2004 + since 2004	+/- 2009	+	+	+/-	IOs and NGO since 2000	+/- 2004 to 2008	+/- 2007 to 2010

*Low cost marked + (referring to a favourable element for compliance and vv).

6.5 Criminalisation, Prosecution and Punishment of Human Trafficking

Moldova is a major country of origin and transit in trafficking of human beings (Busceanu *et al.* 2009). It has been propelled by its poor economic situation, geographic location and corruption, particularly related to the Transnistrian border area.

International organisations observed, before the EU-Moldova action plan was launched, that the Moldovan fight against trafficking was inadequate due to a lack of resources, border guard corruption and legislation which did not prohibit trafficking (TIP 2001).

¹⁷² Ibid.

¹⁷³ Author's interview with an interviewee no. 32, Chisinau, June 2010.

At that time the criminal code the law was only in a draft form and it was also reported that there were no traffickers sent to jail by 2001 and therefore implementation was lacking even if there were cases in the court (TIP 2001).

When the EU action plan was launched, it addressed human trafficking as part of the organised crime issues section and drew attention to the ratification of international instruments i.e. UN Palermo Protocol; to enhance Moldovan law enforcement authorities and implement recommendations in the OSCE action plan to combat trafficking, focusing on chapters III, IV and V and national human rights action plan provision on trafficking (European Commission 2005). It also required cooperation with law enforcement bodies and support for victims. Similarly to the Georgian action plan it referred to the international legislation of OSCE chapters and also to UN convention rather than making reference to the EU standards.

This section will analyse compliance in regard to convicting and punishing the crime of trafficking of human beings. The action plan objective of punishing trafficking is considered compliant when criminalisation of trafficking of human beings is set into national law and at the implementation level when sentences are carried out.

6.5.1 EU Conditionality, Assistance and Capacity and Technical Support

The EU did not mention in its action plan or in any of its EU-Moldova related official documents conditional incentives for enhancing the fight against human trafficking. When the visa liberalisation plan was initiated in 2010, it included trafficking of human beings as one of the issue areas which needed to comply with EU and international standards in order to benefit from visa liberalisation and therefore EU incentives can be considered high since 2010 and low before then.

EU financial assistance in the sector of trafficking against human beings has been based on projects which are implemented by international implementation partners. The first form of financial assistance for Moldova was funding in 2002 focusing on the fight against human trafficking in women. It donated a grant of €750,000 from August 2002 until February 2004. It was part of the sector focusing on human rights to raise awareness and enhance effectiveness to criminalise and prosecute the trafficking in women and encouraging the authorities to provide protection and reintegration assistance for the victims (Project number 1923). From August 2005 until December

2007 the EU donated €288,880 in the form of technical assistance for the fight against human trafficking. From the beginning of 2006 until the end of 2007 the EU also focused on the Iasi area of supporting the fight against trafficking with €59,000.

After the ENPI, Aeneas allocated from the end of 2006 until the end of 2008 to Moldova and Ukraine €748,492 with the ILO as an implementation partner in a project focusing on the 'Elimination of Human Trafficking through Labour Market based Measures' (European Commission 2007a). Furthermore, it also, from the end of 2006 until the end of 2008, donated through Aeneas to Ukraine and Moldova just over €1.7 million with the IOM as an implementation partner in a project 'Combating Trafficking in Human Beings in Ukraine and Moldova' (European Commission 2007a).

Before the ENPI funding had been approximately €1,097,880, after the ENPI funding increased and totals approximately €2.4 million. The total allocation of approximately €3.4 million in comparison to other issues areas is the lowest amount of financial assistance by the EU.

The EU's direct contribution and involvement in fighting against human trafficking started taking place in Moldova just in late 2000 and has been focusing on aspects of stopping trafficking at the border rather than the core causes of trafficking and prevention of people falling victims¹⁷⁴. This contribution is through agencies and programmes such as FRONTEX and Europol. The role of FRONTEX since 2008 has been providing training to border guard authorities, particularly focusing on strengthening their capabilities to identify victims of trafficking (FRONTEX News 27/02/2009). Europol and Moldova signed a cooperation agreement in The Hague, on 12 February 2007. Cooperation aimed to facilitate information exchange and to create for Moldova an opportunity to participate in seminars, training and expert visits of law enforcement authorities (European Commission 2011b).

Outside of this the EU's involvement has been limited. TAIEX has delivered only two seminars and one study visit, focusing on combating human trafficking involving the participation of Minister of Internal Affairs since 2008.¹⁷⁵ The EU has also, just since

¹⁷⁴ Author's interview with an interviewee no. 72, Chisinau, 2010.

¹⁷⁵ See the List of Taiex events, available at: http://ec.europa.eu/enlargement/taiex/dyn/taiex-events/library/detail_en.jsp?EventID=30529.

2011, focused on protection of victims of human trafficking when the mobility partnership initiated new projects (European Commission 2011c).

In sum, the EU approach to the fight against human trafficking is more project-based and limited to influence through implementation organisations which it has provided funding for rather than its own effort going beyond the actions taking place on the border.

6.5.2 Macro and Micro Level External Pressures

No conditional incentives were given by any other organisations or countries to address Moldova's trafficking issues. Whereas the EU engaged in the human trafficking issues just from 2002, international organisations have been supporting the area already before then. The US state department has organised projects and financial assistance since 2000 (USAID 2002), the IOM has provided legal framework recommendations since 2000 and victim assistance and capacity building,¹⁷⁶ and the OSCE has provided legal expertise on trafficking issues since 2005.¹⁷⁷ In addition, international NGOs, especially la Strada and also the Swedish Development Agency (SIDA) have had an important role in Moldova in the area of trafficking. All main international organisations and NGOs that are promoting anti-trafficking in Moldova are focusing on the main three aspects of trafficking: prevention, prosecuting and criminalisation, and protection (USAID 2002:12).

6.5.3 Domestic Conditions and Costs

The costs at the legislative level for criminalisation of human trafficking were low as it does not require institutional changes but only amendments to existing criminal codes which already included human trafficking as an offence since July 2003. At the implementation level criminalisation incurs economic costs. The numbers of crimes has previously been high in Moldova in comparison to other countries and as per capita it is one of the highest trafficking countries in the world (Kontula and Saaristo 2009) costs of prosecuting and punishing were high.

¹⁷⁶ See: http://victimsoftrafficking.esclavagemoderne.org/pdf/IOM_MoldovaSheet.pdf.

¹⁷⁷ For instance with the 'Law to Prevent and Combat Trafficking in Human Beings', the National Action Plans to Prevent and Combat Trafficking in Human Beings and the 'Law to Prevent and Combat Family Violence' and subsequent amendments (Source OSCE, 2011).

6.5.4 Process and Current Status of Formal and Behavioural Compliance

The main developments in the anti-trafficking law took place as a consequence of a joint effort by international organisations, Moldova and NGOs from 2001 onwards (IOM 2008b). Moldova did not have any legislation capable of dealing with trafficking crimes either for perpetrators or victims still in 2000. At the formal level the two most important steps taken in Moldova have been in 2002 when trafficking of human beings became criminally punishable by adding it into its criminal code (in article 165) and amending it in 2006 (Fomina and Rusu 2006) and when the Law on Preventing and Combating Human Trafficking was passed in 2005.¹⁷⁸ The criminal code imposes imprisonment from seven to 15 years and if trafficking leads to ‘serious bodily injury, psychological damage or a death punishment is increased to imprisonment for 15 to 25 years or to life imprisonment’.¹⁷⁹ On the basis of the progress reports it can be concluded that the legal aspects are in place already since 2005-2006.

Despite success at approximation levels, both EU progress reports and TIP reports have expressed concern over some aspects of punishment in practice. Even if in overall terms there are convictions, especially increasingly since 2003 (see table 6.4), the Moldovan government made little effort investigating or prosecuting government officials linked to trafficking crimes (TIP reports 2004-2010). They also found corrupt judges downgrading trafficking charges for lesser penalties (TIP 2005, 2009) and Moldovan authorities lagged in the follow-up on cases of alleged complicity of government officials in trafficking (TIP Report 2007, 2010). Furthermore, the government has not prosecuted or criminally punished any government official allegedly complicit in trafficking and it is also failing to give data on convictions (TIP 2010).

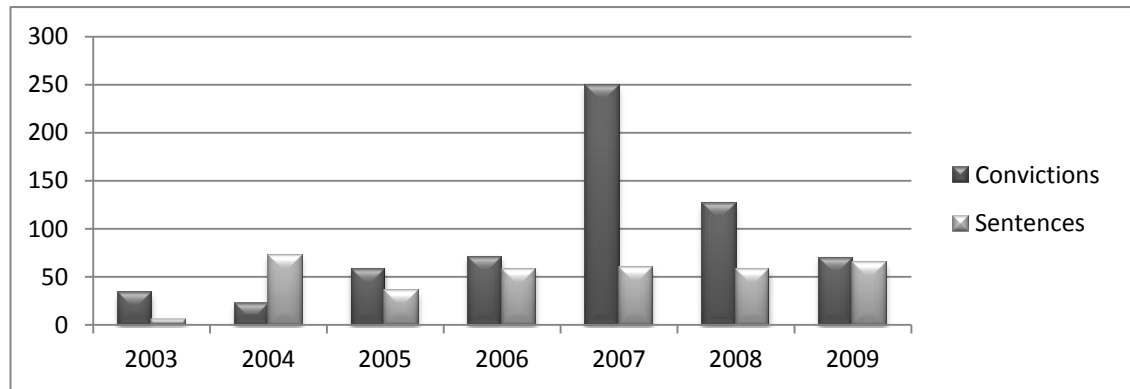
Only on a few occasions have elements of implementation of criminalisation and punishment been seen on the ground. In 2006 several officials were dismissed from their jobs for assisting a trafficker and his syndicate but they were not convicted (TIP 2009). During 2008, the government prosecuted one trial court judge and investigated another suspected of downgrading the charges in two trafficking cases and imposing on the defendants less severe penalties than prescribed by the law (TIP 2007, 2009). The TIP reports that their data demonstrate still in 2011 that the government did not take

¹⁷⁸ *Law on Preventing and Combating Trafficking in Human Beings Official Monitor of the Republic of Moldova no. 164-167/812 of 9 December 2005* [Republic of Moldova], No. 241-XVI, 20 October 2005, available at: <http://www.unhcr.org/refworld/docid/4c3d839f2.html>.

¹⁷⁹ *Criminal Code of the Republic of Moldova, No. 985-XV of 18 April 2002*, Official Monitor of the Republic of Moldova No. 128-129/1012 of 13 September 2002.

significant efforts to punish government officials complicit in human trafficking and the EU progress report also pointed out that Moldova should have made more of an effort in tackling organised trafficking networks and activities and substantial capacity-building is still needed in all relevant stakeholders including law-enforcement agencies (European Commission 2011b)

Table 6.4 Human Trafficking Convictions and Sentences in Moldova



Source: Author's constellation of available data from TIP Reports

6.5.5 Conditions and Logic for (non)Compliance

6.5.5.1 Formal Compliance

Compliance at the legislative level took place from 2005 to 2006 under conditions of medium levels of membership expectations and identification, low political costs and high legitimacy and high attention from International Organisations and NGO. Low EU incentives and low EU assistance and involvement from the EU agencies until 2008 did not halt compliance.

While the EU had low potential to directly influence this area and legitimacy was not able to explain compliance on its own as it had been present already earlier, the explanatory factors for compliance are the many international organisations that since 2000 had already been involved in assisting Moldovan approximation with the international standards in regard to anti-trafficking issues and the fact that it was also a legitimate issue. As an interviewee argued, Moldova, at the time, had a bad reputation as a country of trafficking¹⁸⁰ and wanted to demonstrate that it belongs to the international community by respecting international human rights through adopting legitimate requests.¹⁸¹ However, despite following the EU standards, interviewees also

¹⁸⁰ Author's interview with an interviewee no.42 and an interviewee no. 62, Chisinau, June 2010.

¹⁸¹ Ibid.

argued that Moldova's focus was according to international regulations at that time.¹⁸² Moldova has longer established relations with many international organisations working in human trafficking related issues whose standards it refers to.¹⁸³ Therefore, while the environment in Moldova of wanting to approximate to international standards in regard to trafficking was emerging in 2005 and motivating changes in law, facilitation was due to international agencies assistance and their standards, as the perception that authorities get from Moldova is that officials doubt whether the EU is even interested in seriously promoting the fight against trafficking in Moldova, as it does not itself benefit from it.¹⁸⁴ Therefore, the EU had no influence in promoting legal change in the criminalisation of trafficking.

6.5.5.2 Behavioural Compliance

Behavioural compliance did not fully take place under the same conditions as at the formal level conditions except for higher political and economic costs. It did not improve in 2008 when there was a higher membership belief, identification and when the European Alliance coalition pushed out the Communist government and when in 2010 the visa liberalisation incentive included human trafficking as one of the issues to be adhered to.

Many reasons, which are in essence related to the complexity of the crime, explain the lack of implementation i.e. difficulties in interpreting the law, lack of knowledge of dealing with trafficking crimes, difficulties in gathering evidence especially if a foreign country is involved and establishing what is trafficking from crimes of labour because in almost all cases the victims were paid but they received less than promised which initially brought up the crime (Fomina 2011). There were two main reasons for the lack of prosecutions: corruption and long sentences for trafficking crimes. First the interviewees found system wide corruption as the main problem for completing prosecutions and also the fact that after the new government has been replaced it takes long time to fight patterns of corruption at the state level.¹⁸⁵ Secondly, the high minimum threshold for trafficking punishments may make prosecutors and criminal judges reluctant to prosecute and punish cases of trafficking under article no. 165. For example, OSCE demonstrated that one single act of recruiting into prostitution would be

¹⁸² Author's interview with an interviewee no. 9, Chisinau, June 2010.

¹⁸³ Ibid.

¹⁸⁴ Author's interview with an interviewee no. 72, Chisinau, June 2010.

¹⁸⁵ Author's interviews with an interviewee no. 42 and an interviewee no. 46, Chisinau, June 2010.

punishable with at least seven years of imprisonment, whereas an act of slavery would only start from minimum of 3 years of imprisonment up to 10 years (Kartuch *et al.* 2003). These harsh minimum sentences for trafficking meant as a consequence that judges found it difficult to impose and often ended up giving sentences under other terms than trafficking which often were not more severe than fines (Kartusch *et al.* 2003).

Thus, the influence of the EU in Moldova in the area of fight against human trafficking is minimal also at a practical level. The EU did not refer to its own standards or use direct incentives before 2010, the financial assistance was low and forms only part of the international organisations run projects. Its own agencies are only focused on stopping the crime on the border whereas the approach really to tackle the crime is prevention of becoming a victim within the country.¹⁸⁶ Furthermore, the TAIEX events were previously found to be only beneficial when an expert from the government participates but more often than not the case is that anyone with no prior knowledge takes part instead and little benefit is taken from it.¹⁸⁷ The lack of compliance is therefore to do with the lack of capacity at the domestic level and the EU's lack of influence is due to its own lack of interest in the issues apart from providing assistance to internationally implemented projects.

Despite this it is demonstrated that Moldova is taking steps both to address legal approximation and implementation with the EU standards as demonstrated when the Ministry of Interior approved the visa liberalisation action plan for the period of 2011 - 2012. It approached OSCE in Moldova to request assistance in establishing experts in the review of Moldova's anti-trafficking legislation and its compliance both with binding and non-binding European and international standards (OSCE 2011).

¹⁸⁶ Author's interview with an interviewee no. 72, Chisinau, June 2010.

¹⁸⁷ Author's interview with an interviewee no. 23 and an interviewee no. 32, June 2010.

Table 6.5 Conditions for (non)Compliance: Fight against Human Trafficking in Moldova

Moldova	EU Membership Prospect	Identification with the EU	Clarity and Size of Issue-Specific Incentives	Financial Assistance	Technical Cooperation	Legitimacy	Political Costs	Economic Costs	External Pressures	Formal Compliance	Behavioural Compliance
Human Trafficking	+/- until 2009	+/-	- until 2010	- until 2002	- until 2008	+	+	-	USaid, IOM since 2000	+ 2005-2006	+/-
	+ since 2009		+ since 2010	+ since 2002	+ since 2008					+ 2011	

*Low cost marked + (referring to a favourable element for compliance and vv).

6.6 Conclusion

This chapter discussed the EU approaches and domestic conditions and responses for approximation with the EU action plan recommendations in four selected issues of the action plan: border guard reform, readmission agreement, asylum protection and punishment for the crime of human trafficking in Moldova. In the case of Moldova, like in Georgia and Ukraine, the EU only used direct conditionality and high amounts of financial assistance in the border management and readmission sectors before 2010. However, when the visa liberalisation plan was initiated in 2010 it also expanded conditional benefits to all four sections.

In Moldova the EU's capacity to promote compliance levels¹⁸⁸ were higher overall at legislative and behavioural levels than in either Georgia or Ukraine. All requests in regard to legislative changes complied with the EU standards except non-refoulement, which the government confirmed it would address during the implementation of the other visa liberalisation plan issues. At the behavioural level all of the issues except for having border guard training and carrying out sentences for human trafficking were also compliant with the EU standards. The human trafficking deficiencies were also further addressed since the visa liberalisation plan was launched when the Ministry of Interior has requested the OSCE to assess all the laws which Moldova should adhere to in order to make it compliant with the European and international standards. The main reasons for the non-compliance levels were related to lack of capacity and expertise rather than political will.

¹⁸⁸ See summary of results p. 233.

In general the cases demonstrated that most of the legal amendments and implementation toward the EU standards took place after 2007. The new government and the new enthusiasm in committing to EU integration together with the incentive worked in all cases as a motivator for compliance. The cases that were complied with before EU attention were mostly involving international organisations as the main actors. In all of the cases compliance had seemed to follow the rationalist logic of explaining influence.

Overall, cases of Moldova's non-compliance were to do with lack of capacity and knowledge rather than political will. Issues which were not yet compliant had however started to be acknowledged by Moldova. Thus in comparison to Georgia and Ukraine the fact that Moldova's had increasing expectations of EU membership may have given it the impetus also to comply at the behavioural level. It was demonstrated in that Moldova did not treat the ENP as a substitute but as a stepping stone for EU membership once they converge enough.

The most successful combination of tools for the EU to promote convergence was the membership expectation and direct incentives it provided in regard to increased mobility reflecting that rationalist logic was able to explain compliance with the EU standards. Therefore if the EU wants to retain this momentum where it can have influence in Moldova through incentives, it should acknowledge that keeping the membership incentive open is important.

7. The EU's Influence in the Area of JHA in Ukraine

7.1 Introduction

Ukraine is mainly a transit country and to a lesser degree a country of origin for illegal migration. Its large size with a long border, geographical position and previously having allowed visa free access from the CIS countries has made it a major transit country of irregular migrants after its independence (Düvell 2006). According to UN statistics the absolute number of illegal transitory migrants places Ukraine in the 4th position in the world (Luptakova 2009). Apprehended transit migrants were mostly from the CIS (around 50-56 per cent) and specifically from Moldova, Georgia and Russia (Luptakova 2009). Unlike in Georgia and Moldova, there are also many seeking asylum in Ukraine. On average 1,000 applications are received in Ukraine every year (Luptakova 2009). In addition, even if the amounts are difficult to estimate, as many as 22,000 – 36,000 persons per year are also believed to have fallen victims of human trafficking in the last few years in Ukraine (Ball and Hampton *et al* 2009).

While official EU-Ukraine relations began soon after independence through the PCA in 1994, there was a limited focus on JHA issues in the 1990s apart from police cooperation. EU-Ukraine cooperation was mainly focusing on issues related to energy, environment and nuclear safety.¹⁸⁹ Nevertheless, attention toward Ukraine's migration management questions started earlier than in Georgia and Moldova. The JHA related questions were addressed specifically as part of a separate JHA action plan already before the launch of the ENP and is the only one of its kind in the ENP countries (Knelangen 2007). It preceded the enlargement of 2004, which undoubtedly increased the EU's interest towards Ukraine. Consequently, a JHA action plan already launched in 2001 was later in 2007 replaced by the Justice, Freedom and Security (JFS) action plan.

This chapter examines compliance with the EU's action plan objectives and domestic responses in Ukraine in the area of border guard reform, readmission agreement, asylum protection and criminalisation and punishment of human trafficking: from 2001 until the end of 2011.

¹⁸⁹ In addition to EU-Ukraine ENP cooperation documents EURLEX database and Financial aid Fiches in EURAID database were reviewed from the mid-1990's in order to establish cooperation issues.

It argues that the EU's influence was limited to offering issue-specific incentives and that the EU working as a framework for change when it was the best option to choose from. The EU membership considered as a potential was only influential to motivate change in early 2000. The EU influence was more efficient at formal level and the EU was limited in promoting compliance at the behavioural level and in most cases international organisations and civil society organisations carried out the jobs that the government did not have capacity or commitment to undertake.

The first part starts with an analysis of the border management sector. The second section discusses readmission, the third asylum protection and the last section focuses on trafficking of human beings before summarising findings in the conclusion.

7.2 Border Guard Reform

The porous border and backward structures in border control, as a legacy of the Soviet system, prompted the initial EU engagement in Ukraine. In 2000 when the EU turned its attention toward the JHA sector, the Ukrainian border was still not properly controlled and the Border Guards were a military body prepared for defence rather than law enforcement.¹⁹⁰ The issue of border management became one of the key priorities for the EU for the first time in EU-Ukraine cooperation in the 2001 JHA action plan as a consequence of the upcoming enlargement to its neighbouring countries. The EU wanted to be prepared by enhancing border management because 'Ukraine's territory is increasingly used for illegal immigration and transit of illegal migrants into the territory of the European Union' (European Commission 2007d).

The border management demands in the 2001 JHA action plan envisioned efficient and comprehensive border management on all Ukrainian borders and included issues such as implementation of the action programme, reform of the border troops and cross-border cooperation. The action plan was initially signed for five years before the JFS action plan replaced it in 2007. This upgrade included further recommendations on adoption and implementation of an integrated border management system; to enhance interagency cooperation; improve the existing legal framework; set up a mobile border guard unit and develop specialised training for border guards. Furthermore, it

¹⁹⁰ Author's interview with an interviewee no. 21, Kiev, December 2009.

requested demarcation and delimitation of the border; to develop working arrangements with FRONTEX; and enhanced cooperation with Moldova.

As in the two previous chapters, border guard reform will be analysed against the border guard service being transferred to a rule enforcement agency vested with investigatory power and utilising professional staff instead of conscripts. It is evaluated on whether it has been enshrined into national law and complied with also at the behavioural level.

7.2.1 EU Conditionality, Assistance and Capacity and Technical Support

The EU used conditionality to incentivise border management reform over a number of years and in different ways. Initially, financial assistance for border management reform was clearly conditional on Ukraine's commitment to reform. The first country strategy paper and indicative programme reiterated that the authorities had to commit themselves to the reform and appoint key personnel and if not 'the Commission may suspend or cancel all or part of the programme' (European Commission 2001: 21). In addition, since 2005, consideration about the visa facilitation negotiations became indirectly conditional on border management reform as mentioned in the 'common approach on visa facilitation' document from December 2005.¹⁹¹

On 9 September 2008, visa liberalisation dialogue was launched between Ukraine and the EU 'with the long-term perspective of establishing a visa free regime'.¹⁹² The EU visa-free travel was used as a further incentive for border reforms from 2010 onwards when the EU and Ukraine agreed to enter into a fully operational phase during the 9 June 2010 meeting and created an action plan including all technical conditions that needed to be met before a visa-free travel regime could be established (Council of the European Union 2010a).

The visa dialogue document stated:

'Visa-free regime for Ukrainian citizens can only be established once the relevant conditions are put in place. In particular, visa liberalisation is conditional upon: significant improvements in the level of document security, including biometrics; strengthening of border and migration management and asylum policy; reforms and cooperation in the area of public order and security; addressing external relations issues (including human rights and fundamental

¹⁹¹ see description on page 95.

¹⁹² In Paris EU-Ukraine Summit on 9 September 2008.

freedoms) linked to the movement of persons' (Council of the European Union, 2010a:2).

In regard to border management the national indicative programme (NIP) 2000-2003 in Ukraine allocated funding for border management for the first time under institutional, legal and administrative reform as a separate budget instead of being included in the administrative reform sector as it was in Moldova and Georgia (European Commission 2001:13). The total amount allocated for border management in 2002 was €15 million and €7 million in 2003. In 2005 all JHA related issue areas, one of which was border management, received in total €10 million. Since the ENPI's launch in 2007 funding has increased. During 2007 much of the funding - €35 million¹⁹³ was given toward the EUBAM programme in the sector of border management. EUBAM flanking measures under the ENPI in 2007 for Ukraine was worth €5 million. In 2008 there was no funding allocated but in 2009 EUBAM received a further €12 million. In 2010 the IBM programme received €10 million from the EU covering both Ukraine and Moldova. Also in 2010 a further €66 million was allocated to a sector policy support programme covering border management through the development of an integrated border management strategy.¹⁹⁴ This meant that the EU allocated in total for Ukraine from 2007 to 2011 approximately €128 million and overall €160 million.¹⁹⁵

Ukraine has also benefited from EU capacity building agencies' assistance and programmes specialised in border guard reform since 2003 such as Bommoluk and Huremas, Twinning, TAIEX and FRONTEX. Bommoluk and Huremas projects were implemented by international partners. Border management measures through Bommoluk under the regional action programme in 2003 and 2005 were supported with €9.9 million and implemented by the UNDP. Also, the Commission together with the US state Department funded the Huremas project in 2003 with €4.3 million focusing on border management legislation and training (European Commission 2006). Huremas II was run from 2006 to 2009 with a budget of €5.5 million together from the EU and the US State Department (IOM News Report 23/01/2009). IOM as an implementation

¹⁹³ Project no ENPI/2007/18962. See: Commission Decision [Annex II] on the ENPI Annual Action Programme 2007 in favour of Ukraine to be financed under Article 19 08 01 03 of the general budget of the European Communities, p.16.

¹⁹⁴ Programme no. ENPI/2010/22369. See: Action Fiche Ukraine. Annual Action Programme 2010, part 2., p. 1.

¹⁹⁵ All indicative and programming documents and fiches and thematic fiches reviewed since 2001. When programmes are including more than one country and no amount is allocated, the sum is divided according to amount of countries and represents then only an average.

partner has assisted with legislative reform by drafting guidelines for achieving standards with the *acquis* and the Schengen Border Code (Söderköping Process News 21/9/2009). In addition, it also helped through creating guidelines on EU level practices on border management. The Polish Border Guard and Hungarian Police have been cooperating with Ukraine from 2006 onwards in a Twinning framework. They facilitated 40 training operations in Ukraine for approximately 1,000 Ministry of Interior and SBGS employees (IOM News Report 23/01/2009). Furthermore, 235 Ministry of Interior and SBGS personnel have participated in 35 study visits to Poland and Hungary. TAIEX has facilitated information exchange and training through seminars since 2006, for instance focusing on document safety. The FRONTEX-developed Common Core Curriculum was also applied to training in Ukraine. The application of this means a harmonisation of training content that is applied to all EU member states (Laitinen 2007).

In sum, the EU has aimed to influence through financial conditionality since 2000, technical workshops since 2003 and financial assistance which has been allocated since 2001. Since 2005 the EU has also used visa facilitation and from 2008 visa liberalisation as incentives for border management reform. In total the funding allocated to the border management sector has been the highest amount out of the four sectors and three countries of the research.

7.2.2 Domestic Conditions and Costs

When the EU voiced a request for border guard reform toward a law enforcement agency in 2001, the Ukrainian system was still a militarised border guard system.

The political costs that Ukraine faced with legal change were high as it required a separation of the border unit to become an independent body as it was initially formed as a part of the defence system. Consensus did not take place among the political authorities as not everyone saw that security sector reform, which border guards were part of, was necessary (Krivosheev *et al.* 2009). Border guard reform was contested by the Ministry of Interior because its transformation to a law enforcement agency limited its power due to a split of tasks and consequently loss of financial budget (Wunderlich 2009).

The practical application of the legislation also had high costs as it involved phasing out the conscript service and consequently required a large amount of border guard training.

The numbers of border guards to be trained was as high as 50,000.¹⁹⁶ While training itself generated costs, the high turnover of the staff generated more costs as lots of training was not passed on to others.¹⁹⁷ An interviewee maintained that after 3 or 4 months they have to train a whole new group of people because when some are still conscripts the information is not passed on when they finish their term of service.¹⁹⁸

7.2.3 Macro and Micro Level External Pressure and Support

Apart from the EU, no other organisations were able to use conditionality in Ukraine to promote border guard reform. As in the case of Georgia, Ukraine had created relations already since independence with NATO by joining the North Atlantic cooperation council in 1991, then the PfP in 1994, and in 1997 the NATO- Ukraine charter was finalised which aimed for cooperation in the defence and security sector (Simmons 2011:169). In the Ukrainian case the desire for NATO membership has never been fully shared with all of the political actors. Even if a consensus was expressed between Yushenko, Tymoshenko and Yanukovich on using a nationwide referendum on accession in 2008, soon after Yanukovich came to power Ukraine pledged to break the ambition to aim for NATO membership (Simons 2011:172). In fact, on 3 June 2010 the Ukrainian parliament voted against future NATO membership (BBC News 03/06/2010).

Other organisations have nevertheless been important in the reform process.¹⁹⁹ Especially the IOM, the OSCE, the ‘Centre for Security, Development and a Rule of Law’ (DCAF), EU member states and the EU permanent representative have been influential in assisting with the preparation of new laws and reform.²⁰⁰ Therefore, even if the main incentive came from the EU to potentially influence decision making, many other actors have supported approximation and practical application.

7.2.4 Process and Current Status for Formal and Behavioural Compliance

A presidential decree initiated the reform of the Ukrainian border guards in 2000 from a Soviet-style border system into a law enforcement agency (Chumak 2007; Wunderlich 2009). Since 2001 the Ukrainian border guard announced that it would start reform according to European standards (Quo Vadis-Report 2007). It was followed by

¹⁹⁶ Author’s interview with an interviewee no. 29, August 2011.

¹⁹⁷ Author’s interview with an interviewee no. 11, Brussels, June 2011.

¹⁹⁸ Ibid.

¹⁹⁹ Author’s interview with an interviewee no. 29, August 2011.

²⁰⁰ Ibid.

legislative change through the law on ‘Border Guard Service on Ukraine’, which was passed on 3 April in 2003. The law meant that the border troops were to be demilitarised and be made an autonomous unit called the State Border Guard Service which made the transformation toward European standards possible (Bruun *et al.* 2006; Chumak 2007). Compliance at the formal level in regard to the agency took place already in 2003.

In regard to the training of border guards and phasing out of conscripts, the progress has started but is still ongoing. Transferring the agency to a fully professional agency was set in the ‘State Programme of Development of the Armed Forces 2006 –2011’ (White Book 2009). After this Ukraine started using professionally trained border guards and recruited personnel through an entry examination based on contracts starting from 2007. Training followed the EU standards and therefore can be considered as partially compliant from 2007 onwards.²⁰¹ It was initially aimed to phase out conscripts and have a fully professional service by 2010.²⁰² Soon however it was realised that it will take more time and the new deadline was set to 2015.²⁰³

In sum, besides successful legislative compliance with the EU standards, overall the EU’s first progress report of the Action Plan on Visa Liberalisation found very good progress within the border management sector even if training is still an on-going process.²⁰⁴ Border guard reform is therefore considered to be partially compliant at the behavioural level.

7.2.5 Conditions for (non)Compliance and Logic of Compliance

7.2.5.1 Formal Compliance

Compliance in border guard reform took place when the law on ‘Border Guard Service on Ukraine’ was adopted in 2003. This created the border guard service as an independent body separate from the defence department and set the regulation into the law in regard to demilitarisation of the service.

²⁰¹ Author’s interviews with an interviewee no. 21 and an interviewee no. 26, Kiev, December 2009 and an interviewee no. 22, Brussels, June 2011 and an interviewee no. 29 in August 2011.

²⁰² Ukraine Ministry of Defence 2006, White Book 2005, Defence Policy of Ukraine, p.24.

²⁰³ Country advice-Ukraine-draft evasion 11/12/2009.

²⁰⁴ SEC(2011) 1076, Brussels, 16/09/2011.

Compliance occurred under conditions of high expectations of EU membership, medium identification, and high financial assistance and incentives. Low technical cooperation (before 2005) low external support, high political and economic costs and low legitimacy did not halt compliance at the formal level.

Thus under these conditions Ukrainian border guard reform at the legislative level was motivated by financial incentives and large amount of financial assistance. It was also motivated to match western counterparts' standards in border management in realisation of its own deficiencies (Wunderlich 2009).

7.2.5.2 Behavioural Compliance

Behavioural compliance has partially taken place since 2007. Conditions were the same as under formal compliance except for costs which were economically high. With the help of large amount of financial assistance and technical support, most importantly from EUBAM the border guard transformation progress has been successful but it is still ongoing.²⁰⁵ Success has been made possible due to two issues at the domestic level. First, the border guard service is an independent body and therefore has not been affected by the restructurings in the migration service but rather has been able to make its own decisions.²⁰⁶ The second reason is that the leadership of the border guard service has been the same since 2002 and this has given continuity to its reform process (Wunderlich 2009).

This case demonstrates Ukraine's self-driven convergence toward the EU standards however with assistance from the EU. It is evident as Ukraine first initiated the reform before EU involvement and EUBAM was also launched due to Ukraine's and Moldova's joint request to the EU and later exemplified by Ukraine's commitment to reforming according to the European IBM system practices. While EU incentives for visa facilitation and visa liberalisation emerged later the commitment for transformation was already established. This case suggests that Ukraine is aiming to comply with the EU standards as it considers it as a reference point in its own reform process because it had no other model to refer to after separating itself from old Soviet based system. This

²⁰⁵ Author's interview an interviewee no. 29, August 2011 and an interviewee no. 21, Kiev, December 2009.

²⁰⁶ Author's interview with an interviewee no. 40, Kiev, December 2009.

suggests a combination of rationalist and constructivist logic explaining compliance in this case.

Table 7.1 Conditions for (non)Compliance - Border Guard Reform in Ukraine

Ukraine	EU Membership Prospect	Identification with the EU	Clarity and Size of Issue-Specific Incentives	Financial Assistance	Technical Cooperation	Legitimacy	Political Costs	Economic Costs	External Pressures	Formal Compliance	Behavioural Compliance
Border Guard Reform	+/- until 2002 + until 2007 +/- until 2011	+/- until 2002 + until 2007 +/- until 2011	- until 2000 +/- until 2005 + since 2010	+ since 2000	On the ground IOM, OSCE, DCAF, the EU member states. US	-	-	-	No NATO pressure, IOs at the implementation level	+ 2003	+/- since 2007

*Low cost marked + (referring to a favourable element for compliance and vv).

7.3 Readmission Agreement

With regard to irregular migration, Ukraine is both a country of transit and origin of illegal migrants. The transit migrants come from Asia, the Middle East and Africa and attempt to travel towards the EU (Düvell 2008). It is estimated that over the last ten years there have been between 800,000-1.6 million illegal migrants trying to enter the EU (Luptakova 2009). The need for a readmission agreement with Ukraine with the intention of controlling the amount of irregular immigrants coming to Europe had been on the EU's agenda already since the PCA. This section analyses readmission agreement in terms of (non)compliance both at formal and behavioural levels.

7.3.1 EU Conditionality, Assistance and Capacity and Technical Support

The ambition to complete readmission with Ukraine was mentioned in the PCA as 'the opportunity to examine the joint efforts in regard to controlling illegal immigration taking into account the principle and practice of readmission' (European Commission 1994). However, there were no direct incentives set against the completion of a readmission agreement before 2005. When the EU action plan announced that 'a constructive dialogue on visa facilitation between the EU and Ukraine would be established, with a view to preparing for future negotiations on a visa facilitation agreement, taking account of the need for progress on the ongoing negotiations for an EC-Ukraine readmission agreement', it was clear that visa facilitation was conditional

on a readmission agreement (2005:4). Furthermore, in 2008 the implementation of the readmission agreement became tied to future cooperation and visa free travel. It was decided, when the EU-Ukraine Summit took place on 9 September 2008, that a dialogue on visa-free travel of Ukrainians to the EU would also be launched and, in addition to readmission, included provision for biometrics, public order and security, external relations and fundamental rights before Ukraine could benefit from visa liberalisation (Council of the European Union 2010a). On 22 November 2010, during the EU-Ukraine summit, the action plan towards visa liberalisation for Ukraine was agreed. Thus, direct incentives have been high since 2005, first tied to visa facilitation and since 2008 to visa liberalisation.

Besides strong direct incentives the EU also supported the readmission request through financial assistance in Ukraine since 2007. The main form of assistance was €35 million, granted in 2007 to support infrastructure and capacity to deal with irregular migrants to reduce the flow through Ukraine (European Commission 2007c). In addition, Gumira project has provided humanitarian aid, social and interpretation assistance to third country citizens (Commission Newsletter 18/09/2009). Other direct financial sources were not available according to programming documents.

The EU has mainly operated through implementation agencies in assisting the potential consequences of the readmission agreement besides some limited approaches through TAIEX and Twinning tools. The main implementation partner for the readmission agreement related consequences is the IOM, which has implemented projects related to own nationals' reintegration, voluntary return and also addressing detention conditions on the ground. The IOM supported the readmission agenda by establishing seven centres on migrant advice and providing information on migrant's rights, legal opportunities and employment schemes for those residing temporarily or permanently in Ukraine during 2005-2009 and in total assisted 74,963 persons.

The EU TAIEX programme has organised three seminars between 2009 and 2010 on readmission related issues. The Twinning light project 'ERIT' was set up to support and mentor on the implementation of readmission (European Commission 2010a). In sum, the EU's main tool to exercise influence has been its incentive for visa facilitation

and also the financial assistance that it has provided to cover the consequences of the implementation of the agreement.

7.3.2 Macro and Micro Level External Pressure and Support

Besides the EU's incentives there have not been other forms of conditionality impacting Ukraine's decision to comply with the EU readmission agreement. However, Ukraine has benefitted from international organisations and NGO's support on the ground. The IOM has focused on projects in regard to voluntary return, detention centres and reintegration and the local NGOs on the ground have been the Chernihiv Public Committee for Human Rights Protection, NGO Volunksi Perspektyvy, NGO NEEKA at Mukachevo Dormitory and NGO Caritas which have supported the running of the migrant accommodation centres (EuropeAid 2010). Despite this, there have been no donors other than the EC investing in readmission-related assistance even if the US State Department, the Swedish International Development Cooperation Agency (SIDA) and the Canadian International Development Agency have contributed to asylum projects (European Commission 2007e).

7.3.3 Domestic Conditions and Costs

Contrary to the Moldovan and Georgian reaction to the readmission agreement, the EU's invite to Ukraine to complete a readmission agreement since 2002, faced both domestic opposition and adoption costs at the political level and therefore costs were high for rule adoption. The domestic political actors' opposition was related to the need to take responsibility for third country citizens and as Ukraine is mostly a transit country the costs are higher than in countries of origin, as they are responsible for onward repatriation (Kruse and Trauner 2008). Interviewees maintained that Ukraine does not have money to 'invest on foreigners' when they have enough of their own problems,²⁰⁷ and furthermore there is not the required capacity to cope with them which puts Ukraine in a position where it can be endangering human rights standards.²⁰⁸ At the population level costs also stem from the need to address the lack of acceptance toward different groups of people as demonstrated by multiple racially motivated attacks in 2006.²⁰⁹

²⁰⁷ Author's interviews with an interviewee no. 11, Brussels, June 2011.

²⁰⁸ Author's interview with an interviewee no. 48, Kiev, December 2009.

²⁰⁹ Author's interview with an interviewee no. 49, Kiev, April 2008 and an interviewee no. 44, December 2009.

At the practical application level readmission agreement costs relate to both own nationals and third country nationals. Even if own nationals are included in international customary law and every state is responsible for taking back its own nationals, signing a readmission agreement which makes it official is likely to raise the numbers of returned (Kruse and Trauner 2008). This has consequences in two different ways: firstly, returnees usually settle in cities rather than go back to the countryside which they originally left, thus placing further pressure through urbanisation (Kruse and Trauner 2008). Secondly, returned nationals result in loss of remittances for Ukraine. The remittance loss is quite important in Ukraine as it is estimated that Ukrainians could send back between \$4-7 billion annually (state budget: \$6.9 billion) (Düvall 2009; Melnykovska 2006). Moreover, Eurostat statistics demonstrate that since 2004 each year there has been over 11,000 Ukrainians removed from the EU²¹⁰, which could also increase as a consequence of the readmission agreement (Kruse and Trauner 2008).

Concerning third country citizens, implementation costs are high because as a consequence of the readmission agreement the number of readmitted is expected to increase. Because Ukraine's capability to deal with illegal migrants even before the readmission agreement was weak, with overcrowded detention centres and long waiting times, the readmission agreement is likely to make the third country citizens even more vulnerable to ill-treatment.²¹¹ A Ukrainian official argued that Ukraine was not ready to implement the agreement as it did not have the required capacity when it was expected to start implementation.²¹² In addition it was felt that the readmission agreement would put too much pressure on the system as officials were still trying to catch up with previous applications due to the standstill of the migration system in mid-2000.²¹³

7.3.4 Process and Current Status for Formal and Behavioural Compliance

Even though readmission was mentioned in the PCA, it took until August 2002 before the EU invited Ukraine to enter negotiations for a readmission agreement (Coleman 2009). Four meetings later the issue had not proceeded and Ukraine requested assistance to support the consequences of implementing readmission, especially for reception conditions (Coleman 2009). As these requests were in line with the EU strategy anyway the EU was happy to do so but later Ukraine also expressed a desire for visa facilitation

²¹⁰ 2004 there were 13.156 readmitted; in 2005 11.314; in 2006 12.859 and in 2007 11.518 (source: Eurostat)

²¹¹ Author's interview with an interviewee no. 48, Kiev, December 2009.

²¹² Ibid.

²¹³ Ibid.

to be tied to the negotiations for the readmission agreement (Coleman 2009). The Commission agreed to extend visa facilitation to diplomatic passports and people with service status, even if member states expressed fears that due to corruption passports could end up in the wrong hands (Coleman 2009). Since the beginning of negotiations a total of twelve rounds of readmission negotiations and four rounds of visa facilitation negotiations took place before completion of the EU-Ukraine readmission agreement. The ratification²¹⁴ was supported by 226 MPs, with 226 votes required for endorsement (Söderköping Process News 15/01/2008). Because the visa facilitation and readmission agreements between Ukraine and the EU were signed and ratified on 1 January 2008 it represents a successful case of compliance.

Practical application of a readmission agreement obliges procedural requirements on how and when a country readmits illegal own citizens, third states and rejected asylum seekers. Due to the recent timing of the agreement the analysis of the implementation of readmission agreement is analysed here on the basis of whether the readmission agreements' consequences are prepared for rather than analysing how the readmission procedure is carried out.

At the behavioural level Ukraine has complied only partially. Firstly, Ukraine has not yet concluded any implementation protocols, however is negotiating with several member states (European Commission 2011:6). Secondly, Ukraine has already concluded readmission agreements beyond the EU states with Russia, Republic of Moldova, Turkey, Turkmenistan, Uzbekistan and Vietnam and is negotiating with Belarus and several countries in Central Asia. Thirdly, Ukraine has not been successful in regard to preparing for an increased number of third country citizens in detention centre facilities. Detention centre conditions are also heavily criticised by the Council of Europe's Committee for the Prevention of Torture and Inhuman and Degrading Treatment (CPT) as well as by a number of human rights organisations (European Commission 2011). Fourthly, the question of reintegration of own nationals by preparation on the action plan 'Integration of Migrants in Ukraine and the Reintegration of Ukrainian Migrants up to 2015' has been prepared and is before the government pending approval (European Commission 2011). Overall, the implementation level was not fully compliant even if progress has been made.

²¹⁴ Draft bill No.0011.

7.3.5 Conditions for (non)Compliance and Logic of Compliance

7.3.5.1 Formal Compliance

The readmission agreement was signed in 2008. It took place under conditions of medium identification and medium strength for membership prospect, strong conditionality and financial assistance. The lack of technical assistance groups, legitimacy and external pressure, and high political costs did not stop compliance. Membership aspiration and expectations, and identification with the EU had been present already since the late 1990s and therefore on their own are incapable of explaining influence. The visa facilitation incentive on its own was not enough to motivate Ukraine to sign the readmission agreement because it was not signed before 2008 even if the visa facilitation incentive was present already since 2005. Just when the EU agreed on the promised financial assistance did the negotiations proceed to the signing of the agreement. Therefore, the case suggests that issue-specific conditionality and assistance was together enough to overcome the costs. It is likely that the fact that the membership was still aimed for and that the Ukrainian elite identified with the EU may have also had a role. This case is best explained by the rationalist logic.

7.3.5.2 Behavioural Compliance

Preparation for the implementation of the readmission agreement was not fully complying with the EU recommendations.²¹⁵ Ukraine has not yet signed implementation protocols with any EU member states and detention centres were not satisfying human rights standards for reception. However, Ukraine had completed readmission agreements with numerous other states beyond the EU and also started addressing the reintegration of its own nationals. This partial compliance took place under the same conditions as at the formal compliance level except for the visa liberalisation incentive had now also been made available for Ukraine and high economic costs. Therefore, the favourable conditions for compliance were the visa liberalisation incentive, increased capacity building assistance from the EU and high involvement of the international organisations and NGOs on the ground.

Ukrainian authorities maintained that a lack of capacity prevented them from complying whereas the EU and international experts considered poor performance as a consequence of a lack of political commitment.²¹⁶ While comparing the levels of

²¹⁵ Author's interview with interviewee no. 11, Brussels, June 2011.

²¹⁶ Author's interviews with interviewee no. 39 and an interviewee no. 40, Kiev, December 2009.

compliance in the readmission sector issue areas it is evident that Ukraine had been successful in the areas which were more beneficial for it i.e. facilitating readmission agreements with other countries, which would make it easier for it to pass on the illegal immigrants that are in Ukraine or are readmitted to Ukraine from the EU. Also it had started creating reintegration programmes for its own citizens, while treatment of third country citizens has been found to violate the international human rights standards. It has not either managed to sign implementation protocols with the EU.

This suggests that the EU visa liberalisation incentive has not been important enough in Ukraine to promote compliance at the practical application level in the detention centre area or in the implementation protocols. While the detentioncentre issue is suffering from lack of capacity due to already bad starting conditions, the migration service restructuring put on hold progress at the national level.²¹⁷ The lack of motivation to complete implementation protocols could be explained, as an interviewee commented, that Ukrainian authorities ‘expect that because they are an important country to the EU the EU will in any case give visa free travel even if all the conditions are not fulfilled’.²¹⁸ As a consequence at the practical level the challenging detention centre conditions are coped with through a combination of EU assistance, and support from the international and voluntary organisations.²¹⁹ In sum, whereas formal compliance took place through a combination of conditionality and financial assistance, behavioural compliance has been partially compliant due to EU funded and IO implemented projects at scattered level while government contribution has been low apart from addressing its own citizens’ reintegration and readmission with countries beyond the EU. The EU was able to motivate the signing of the readmission agreement through a combination of visa facilitation incentive and financial assistance. However, it had limited leverage in promoting implementation on the agreement. Even if the visa liberalisation action plan since 2010 included conditions to be complied with, it was found that the EU would not be stringent in all conditions at the domestic level.²²⁰

²¹⁷ Author’s interviews with interviewee no. 39, Kiev, December 2009.

²¹⁸ Author’s interview with an interviewee no. 11, Brussels, June 2011.

²¹⁹ Ibid.

²²⁰ Ibid.

Table: 7.2 Conditions for (non)Compliance - Readmission in Ukraine

Ukraine	EU Membership Prospect	Identification with the EU	Clarity and Size of Issue-Specific Incentives	Financial Assistance	Technical Cooperation	Legitimacy	Political Costs	Economic Costs	External Pressures	Formal Compliance	Behavioural Compliance
Readmission	+/- until 2002	+/- until 2002	- until 2005	- until 2008	+/- until 2005	-	-	-	IOs and NGOs at the implementation level	+ 2008	+/-
	+ until 2007	+ until 2007	+/- until 2010	+ since 2008	+/- since 2005						
	+/- until 2011	+/- until 2011	+ since 2010								

*Low cost marked + (referring to a favourable element for compliance and vv).

7.4 Protection of Asylum Seekers and Refugees

Ukraine is both a destination and a transit country for asylum seekers. Most asylum seekers come from Afghanistan, Bangladesh, India, Pakistan and Russia, even if there are as many as 50 countries from where Ukraine receives applications (Düvell 2008). Statistics show that there are 25,111 refugees currently residing in Ukraine (UNCHR Global Trends 2011) and that there are around 1,000-1,500 applications received every year (Zimmer 2008).

The Ukrainian system of asylum protection began developing after independence and the Ukrainian Parliament passed a law in 1993 on refugees reflecting principles of the 1951 Geneva Convention (Melynovska 2006). The national migration service was created in 1994 and the basic principles in the national migration policy were drafted in 1996 (Melynovska 2006). In 2001 the ‘Law on Refugees’ was adopted and as it met basic international standards in 2002 Ukraine was able to join the 1951 refugee Convention and the 1967 Protocol (Melynovska 2006).

Despite the basic principles being in accordance with international law there were weaknesses both in legislation and the practical application of asylum law especially in regard to recognising other forms of protection besides granting refugee status, respecting the principle of non-refoulement and supporting the rights and conditions of refugees and asylum seekers.

The 2001 action plan recommended approximation of the legislation according to EU norms and standards including assigning responsibility to state authorities. It also called for implementation of the UN 1951 Convention and 1967 Protocol relating to the status of refugees. Besides these issues, the JFS action plan in 2007 additionally outlined more detailed requests: to ensure appropriate conditions in detention centres for illegal migrants; ensure compliance with European standards of administrative legislation in respect to persons detained for illegally crossing the Ukrainian border and to ensure appropriate judicial control over all decisions on detention in no longer than 72 hours. It also requested future legislation to be developed according to European standards and cooperation with UNHCR where relevant. The association agenda which was launched in 2010 for Ukraine also reiterated the same set of issues to be practically implemented: in addition to 1951 UN Convention it also highlighted the need to implement the 2000 UN Convention against Transnational Organised Crime with the aim of ‘combating and preventing criminal activities, organised or otherwise’ (United Nations 2004).

Three aspects of asylum protection are examined both at formal and behavioural levels as in the previous chapters: access to protection including subsidiary protection, the principle of non-refoulement as well as basic standards for reception and protection.

7.4.1 EU Conditionality, Assistance and Capacity and Technical Support

Asylum related issues were mentioned for the first time in the JHA action plan in 2001 and since then have been present in all key EU-Ukraine cooperation documents. There were no direct incentives given for the fulfilment of asylum sector recommendations, however, the common approach on visa facilitation in general maintained that when opening negotiations on visa facilitation the European Commission should also take account of migration and asylum issues among all the other JHA issues (Council of the European Union 2005). When the visa dialogue was launched in 2008 and the action plan came into force in 2010, asylum sector reform was one of the conditions to be fulfilled if Ukraine wanted to benefit from visa liberalisation in the future. Therefore, the incentives before 2005 were low, until 2010 medium and since then high.

The EU has also intended to influence the asylum system in Ukraine through financial assistance. Financial assistance is channelled through Aeneas and thematic migration funding which provides assistance with international organisations as implementation partners. Until 2000 asylum issues did not receive separate support but were included

among other issues under the cross-border control infrastructure programme section that received overall €63 million funding from 1991 until 2000.²²¹ Since the JHA action plan the asylum sector has been addressed specifically and funding has been organised under thematic branches.

There have been so far seven EU funded projects addressing asylum seeker and refugee rights in Ukraine. In 2003 the EC supported asylum protection with a €1.3 million project which was implemented by Austrian Caritas from June 2004-June 2008 called ‘Enhancing Capacities in the Area of Protection and Treatment of Refugees and Asylum Seekers in Zakarpattya’ (EuropeAid 2008). In 2005, Aeneas continued the support for the same programmes with €699,942 between December 2006 and September 2008 (European Court of Auditors 2008). €529,705 was granted to support asylum seekers in Belarus, Moldova, Ukraine and Russia and implemented by ECRE from October 2005 until October 2008, thus, on average each country received €132,000 (European Court of Auditors 2008). From 2006 ‘Assistance to the Legal and Administrative Reforms in Ukraine in the Sphere of Migration and Refugees’ Protection According to the Norms and Standards of the European Union’ - project was implemented between July 2006 – March 2007 with the Ludwig Boltzmann Institute as implementation partner and €500,000 Tacis funding (European Court of Auditors 2008). Aeneas further supported through a project called ‘Strengthening Asylum and Protection Capacity in Ukraine by Enhancing the Capacity of Governmental and Civil Society Stakeholders’ (European Court of Auditors 2008) in a participatory approach and cross-sector co-operation with €534,397 from February 2007 until April 2009, in a project where the Danish Refugee Council was the implementation partner. In 2009, a legal and social protection programme on asylum seeking children and refugee children was supported with €960,000 (European Court of Auditors 2008). In addition, EIDHR also assisted during 18 months with a €78,000 EU contribution to support human rights protection of refugees and migrants in the areas of Chernihiv, Kharkiv, Sumy, Zakarpattya and Lviv from 2005 onwards. The total EU allocation through projects in the asylum sector is approximately €4.5 million (European Court of Auditors 2008).

²²¹ The following amounts donated per year. €11 million, 1992: €16 million, 1993: €9 million, 1994: €10 million, 1995: €7 million, 1996: €3 million, 1997: €7 million, 1998: €7 million, 1999: €4 million, 2000: €0, 2001: €0 (Source European Commission, 2001).

Ukraine is also included in the RPP and it also partakes in TAIEX and Twinning programmes in asylum protection in Ukraine. The RPP covered from 2009 until of the end of 2010 at a cost of €1 million. It was implemented by the UNHCR in cooperation with SBGS, MIA, international organisations and NGOs and is currently being evaluated²²². Ukraine also benefitted from TAIEX in the area of asylum since 2006. It has facilitated experience exchanges to learn about asylum seeker reception systems and working methods with vulnerable groups and integration of refugees with other EU members states. In addition, Twinning projects were taking place from 2009. The first one, for a three year period from 2009-2012 was addressing the ‘Establishment of custody centres and temporary holding facilities for irregular migrants in Ukraine’.²²³ The second Twinning project, launched in 2010, focused on ‘Enhancing the Public Authorities’ Efficiency in the area of Migration Processes Management’, in particular in the context of the implementation of the EU-Ukraine readmission agreement.

In sum, EU conditionality was low until 2005, medium since 2005 and high from 2008 onwards when it was set against visa liberalisation. The EU has provided assistance already from 2000 but in comparison to other areas it was limited: totalling only €4.5 million for the whole time. It is, in comparison to other countries of this research, low taking into consideration the volume of asylum seekers and refugees in Ukraine.

7.4.2 Domestic Conditions and Costs

The domestic costs incurred by the creation of an asylum system were high because in 2000 the central system was abolished and there was a need to create a new system and relevant legislation (UNHCR Global Report-Ukraine 2000). Furthermore, legislation creation was costly because there was not a consensus on its creation as some political actors have an attitude that refugees are not their responsibility.²²⁴

At the practical application level better possibilities for protection, securing respect for non-refoulement and the creation of integration facilities also created high economic

²²² Results of the evaluation are available in February 2012. See: http://unhcr.org.ua/main.php?part_id=33

²²³ See Project data for ‘Custody Centres and Temporary Holding Facilities for Irregular Migrants in Ukraine’, available at: <http://www.easternpartnership.org/programmes/consultancy-set-custody-centres-and-temporary-holding-facilities-irregular-migrants-ukrai>.

²²⁴ Author’s interview with an interviewee no. 11, Brussels, June 2011.

costs due to the continuous nature of the tasks and due to a need to train new staff that are knowledgeable and capable to deal with new challenges.²²⁵

7.4.3 Macro and Micro Level External Pressure and Support

There have been no conditional demands presented from other organisations besides fulfilling the basic conditions to be able to become an IOM member in 1996 and the Geneva Convention (Zimmer 2008). However, Ukraine is benefitting from technical and financial assistance from a large number of international organisations and NGOs.

The main contributors in the asylum sector are the IOM, UNHCR, the US State Department, the SIDA and the Canadian International Development Agency (Zimmer 2008). The IOM has been working in Ukraine since 1996 and it has in its central mandate to support the authorities in developing harmonisation of national law with EU law in the asylum sector. The UNHCR has been supporting the government with drafting legislation, monitoring the implementation of the Geneva Refugee Convention and construction of accommodation centres and the development of the asylum system since 1999. Financial contributions have mainly been coming from the UNHCR which had a budget of €5 million since its initiation but it is as high as €11 million in 2011 (UNHCR Global Appeal 2011).

In addition, 14 NGOs, focusing on legal and social rights of refugees and asylum seekers are formed under a civil society platform called the Ukrainian refugee council which has been functioning since 2008 with its own strategic plan.

7.4.4 Process and Current Status for Formal and Behavioural Compliance

The first asylum law was created in 1993 and its implementation started three years after. It established a basic framework for an asylum system (Zimmer 2008). However, international organisations and the EU raised concerns in 2000 over a lack of access to asylum and other forms of protection including respect to the principle of non-refoulement and minimum reception standards. In 2001 'Law on Refugees' was created to address the previous deficiencies in the asylum system. It has become the principal legislation for refugee matters (UNHCR 2008) up until today and only since 2005 and 2011 have amendments been made. The law provides for non-refoulement (Article 3) and for the issuance of refugee travel documents (Article 1) and the granting of social

²²⁵ Ibid.

and economic rights for refugees (Article 20) (UNHCR 2008), but it can only be considered partially compliant with the EU and international standards as within this legislation there are instances when the law's efficiency is circumvented by other laws or as it does not cover all the aspects of protection.

Firstly, the 2001 'Law on Refugees' created the principal legislation for refugee matters by including a definition of the term 'refugee' according to the 1951 Convention (Article 15). However, even if it had defined refugee according to 1951 standards the law from 2001 did not include other forms of protection besides refugee status. In addition, it did not either have 'provisions on non-discrimination of refugees on grounds of their race, religion or country of origin' (UNHCR 2008a:15). When Ukraine adopted the 'Law of Ukraine on Refugees and Persons in need of Subsidiary or Temporary Protection' on 8 July 2011 (European Commission 2012) it just, for the first time, recognised forms of protection other than on the basis of refugee status, thus, becoming also compliant with the EU standards in 2011.

Secondly, the law from 2001 included non-refoulement, however, because non-refoulement is not part of the 1994 'Law of Ukraine on the Legal Status of Foreigners and Stateless People', which allows the deportation of aliens who commit crimes or offences, therefore, if the foreigners and stateless persons who stayed in Ukraine without Ministry of Interior's registration, 'commit a crime', they face a serious risk of deportation (UNHCR 2008:7).

Thirdly, the asylum standards of reception and refugee treatment were addressed in the law from 2001 and approved that refugees have the same standards as Ukrainians in article 20 and therefore complies with the basic principles.²²⁶ In sum, at the legal level Ukrainian refugee law has been compliant partially since 2001 by providing a basic framework but falling short in respect of non-refoulement. It also fulfilled the EU standards in regard to subsidiary protection since 2011.²²⁷

²²⁶ Author's interview with an interviewee no. 48, Kiev, December 2009.

²²⁷ In addition, in 2011 two laws in regard to asylum protection were submitted to parliament: the 'Code of Administrative Legal Procedures' and 'Law on the legal status of foreigners and stateless persons' The first contains provisions on procedures on expulsion, the second regulates entry and stay conditions, rights and obligations and return and detention procedures of foreigners and stateless persons (European Commission 2011).

The practical application of the law fails to provide protection at most levels and therefore is not compliant with the EU or international standards in most areas. Firstly, access to asylum and other forms of protection is difficult to achieve and therefore does not comply with the access to asylum requirements. It was reported that some of the applications received by the detention authorities did not reach the migration authorities (Human Rights Watch Report 2011). Moreover, an accelerated procedure is used to reject claims frequently even before considering their substance (UNHCR 2008). Furthermore, the law does not provide for non-discrimination on the basis of race, religion or origin. For example, Chechen and Tamil asylum seekers had received a negative response and were not even having an opportunity to be considered as asylum seekers but were out rightly denied due to their origin (Amnesty News 07/03/2008). These difficulties for access to asylum are demonstrated with a decrease in recognition rate (Zimmer 2008). As a consequence even if there were 1,200 applications only 80 were subsequently recognised as refugees in 2005 (Melynovska 2006). Overall recognition rate has changed from year 2001 from about 50 per cent as low as to 2.5 – 3 per cent in 2008 (Zimmer 2008).

Secondly, the principle of non-refoulement is also violated at the practical level. Lack of proper investigation of each case due to having no access to legal specialists or translators during the determination procedure is adding to vulnerability to refoulement (UNHCR Global Appeal 2011). Amnesty reported that there were cases of forcibly removed people without proper investigation. One such case is when Tamil refugees were sent back even if they were in danger of inhumane conditions (Amnesty Report 2010a).

Thirdly, asylum seeker treatment on the ground is seriously violated. For instance, asylum seekers during the decision making process are often not informed of how long it will take and even though a decision should be reached within 6 months according to the law, it usually is reached just after 2-3 years. During this time international organisations have criticised the seriousness of conditions in the detention centres. Asylum seekers are deprived of clothing, food, fresh air and other basic needs (Border Monitoring Project Ukraine 2010) and ‘suffer from determination procedures and police harassment’ (Human Rights Watch 2012). Refugees were deprived from having adequate access to state-sponsored accommodation, material assistance or employment

(UNHCR 2008). In addition, the centres are overcrowded and even if the EU funded a new centre which is under state responsibility, it is kept empty as the staff are not able to get it functioning.²²⁸ The only issue that was complied with in regard to fulfilling minimum conditions for refugees was the issuance of ID cards in 2004.

7.4.5 Conditions for (non)Compliance and Logic of Compliance

7.4.5.1 Formal Compliance

Compliance at the formal level took place in regard to subsidiary protection in 2011²²⁹ and in regard to basic conditions in 2001. Non-refoulement, which was set in legislation, did not comply with either the EU or international rules.

Formal compliance took place under medium membership prospect, medium identification, high incentives, low EU assistance, medium EU cooperation, high international cooperation and high legitimacy. Because identification and the EU membership prospect had in fact reduced from the time of the Orange Revolution it is evident that the incentive for visa liberalisation was able to trigger compliance as legitimacy on its own had not had an impact. As an interviewee commented, ‘it is the only way to put pressure on Ukraine’²³⁰ and it was successful as it was to do with a legal approximation which is not economically costly even if in general refugee and asylum protection matters are not considered to be Ukraine’s responsibility.

While visa liberalisation dialogue had been on-going since 2008, in April 2011 the national action plan for visa liberalisation was approved by the decree from the president which set subsidiary protection as one of the priorities that needed to be fulfilled by the end of 2011. Having created a concrete plan and the political situation allowing again decision making after turbulent years of political fighting the new law was adopted. Thus, this case demonstrates the effect of the EU’s influence to use conditionality but it was only effective because it was not economically expensive and because Ukraine had the capacity to adopt it after having overcome the worst standstill in the refugee protection sector and its own political situation.

²²⁸ Author’s interview with interviewee no. 11, Brussels, June 2011.

²²⁹ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 20 December 2011, L 337/11, available at: <http://www.unhcr.org/refworld/docid/4f06fa5e2.html> .

²³⁰ Author’s interview with interviewee no. 11, Brussels, June 2011.

7.4.5.2 Behavioural Compliance

Behavioural compliance had been lacking at all levels in regard to access to asylum or protection, respect to non-refoulement and offering minimum reception standards and ID document issuance only started in 2004. The conditions for practical application of the law were the same as for formal compliance but compliance did not take place even if since 2008 conditional benefits increased. Four main reasons were found to be crucial for the lack of compliance:

Firstly, the on-going reconstruction of the migration system halted decision making from 2002 to 2006²³¹. This was a consequence of the state committee, responsible for migration and refugee questions, being reorganised 8 times since 1996 until 2008 (Zimmer 2008). As a result since then Ukraine has needed to catch up with the previous applications on top of the new ones when the system started functioning again in 2010.²³²

Secondly, asylum protection has not been considered as one of the priorities in Ukraine. Interviewees maintained that refugees are not considered Ukraine's responsibility when the limited resources should be used to take care of its own citizens.²³³ It was demonstrated in dissatisfaction of using Ukrainian finances. The dissatisfaction was also publicly expressed when Mr. Zlenko Ministry of Foreign Affairs in 2002 commended that 'the reception points are overfilled with thousands of illegal migrants from Asia and Africa, who are sent home at the cost of the scanty Ukrainian budget' (Simons 2011:117). While maintaining the rhetoric that they will soon start implementation, little changes have taken place on the ground over the years.²³⁴

In addition, the government's lack of political will was further demonstrated through lack of staff allocated to tackle the problem. For example, in 2008 there were only 3 people working in the whole of the Kiev area to deal with asylum applications and the limited time given to each case is affecting the quality and speed of asylum decisions (Zimmer 2008).

Thirdly, corruption was also complicating carrying out tasks. An interviewee exemplified the situation by highlighting that the staff who are supposed to help

²³¹ Author's interview with an interviewee no. 40, Brussels, June 2011 and an interviewee no. 48, Kiev, December 2009.

²³² Author's interview with an interviewee no. 48, Kiev, December 2009.

²³³ Author's interview with an interviewee no. 11, Brussels, June 2011.

²³⁴ Ibid.

refugees in the centre and provide food that was donated to support the refugees instead were trying to sell the food to refugees²³⁵ but it is difficult to do anything to it, as it is not possible to monitor on an everyday basis.²³⁶

Fourthly, the official also maintained that besides Ukraine's uncommitted response to the asylum related issues the EU has not either taken a strong role. The EU Home Affair representative maintained that assistance has been low in the asylum sector and that they also do not have too many staff members dedicated to it, thus, it makes it difficult to keep up with all the issues.²³⁷ The EU feels it cannot do more than encourage Ukraine as earlier incentives were not either taken seriously as Ukrainian officials felt that they were too important a country not to be able to receive visa facilitation and that they would anyway receive it eventually.²³⁸ In addition, the EU was also hesitant to take a stronger role due to a variety of reasons. It was expected that it would be difficult for the EU to be strict with one of the issues of its list if other areas would be complied with.²³⁹ It was also seen that Ukraine did not want a stronger involvement as it can be considered as foreign imposition on Ukraine's internal issues.²⁴⁰ Therefore, as an interviewee maintained 'the only thing that the EU can do is to remind the authorities',²⁴¹

In sum, the case of asylum protection reflects a lack of both Ukrainian and the EU's commitment to the issue. Poor convergence was to do with the standstill as a consequence of multiple reforms and reconstructions that the migration service had gone through and the lack of political will. However, the EU's contribution with limited incentives and assistance did not support the compliance either and hence the EU had little influence in the situation when it only could keep reminding about the reforms Ukraine who kept saying they are working on it.²⁴² As a consequence, the international organisations and NGOs in reality end up carrying out the tasks at the moment. However, it was found that there is a good NGO framework and things get done, even if the tasks should be undertaken by the government²⁴³

²³⁵ Author's interview with an interviewee no. 11, Brussels, June 2011.

²³⁶ Ibid.

²³⁷ Ibid.

²³⁸ Ibid.

²³⁹ Author's interview with an interviewee no. 14, Brussels, June 2011.

²⁴⁰ Author's interview with an interviewee no. 11, Brussels, June 2011.

²⁴¹ Ibid.

²⁴² Author's interview with an interviewee no. 40, Kiev, December 2009.

²⁴³ Author's interview with an interviewee no.65, Kiev, December 2009.

Table 7.3 Conditions for (non)Compliance - Protection of Asylum Seekers and Refugees in Ukraine

Ukraine	EU Membership Prospect	Identification with the EU	Clarity and Size of Issue-Specific Incentives	Financial Assistance	Technical Cooperation	Legitimacy	Political Costs	Economic Costs	External Pressures	Formal Compliance	Behavioural Compliance
Asylum	+/- until 2002 + until 2007 +/- until 2011	+/- until 2002 + until 2007 +/- until 2011	- until 2005 +/- until 2010 + since 2010	+/- since 1991	+/- until 2005 + since 2009	+	-	-	No conditionality, IOM, UNHCR, US etc and NGOs	+/- 2001, 2011	-

*Low cost marked + (referring to a favourable element for compliance and vv).

7.5 Criminalisation, Prosecution and Punishment of Human Trafficking

Trafficking of human beings is and has been for the last decade a very salient problem in Ukraine. Ukraine has become one of the main countries of origin for human trafficking. To a lesser degree it is also a country of transit but only rarely a destination (TIP 2001-2011). The victims are most often trafficked to Turkey, Russia and Poland and since 1991 approximately 117,000 Ukrainians have been forced into exploitative situations in Europe, the Middle East, and Russia (TIP 2009). As a transit country Ukraine is often used for trafficking Moldovan victims to Russia (IOM 2008c).

The government's inability to meet minimum standards of preventing trafficking due to a lack of financial resources and low level corruption have been the main causes of concern by the international organisations since 2000 (TIP 2001). Even if in 1998 the Parliament amended the criminal code to make trafficking punishable, in practice, most cases ended in acquittals and small fines (TIP 2001).

The EU acknowledged human trafficking issues in regard to Ukraine for the first time in the Common Strategy Paper in 1999. Since then it has been addressed in the JHA plan 2001 and in most of the key EU-Ukraine documents. The EU action plan set the recommendations for the fight against human trafficking in the section of organised crime (section 3) and requested Ukraine to combat cross-border organised crime, to ratify and fully implement international instruments such as the 2000 UN Convention

against Transnational Organised Crime and the additional protocols, one of which is Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

When the revised action plan was launched in 2007 it had a separate and much more detailed section devoted to trafficking issues. It recommended promoting cooperation and exchange of data between Europol and interested member states; to implement the State Anti-Trafficking Programme; support the creation of a permanent secretariat ensuring regular inter-agency coordination and to promote the child sensitivity approach and finally to implement the UN Convention of the Rights of Children. In addition, it requested the provision of necessary professional skills through training, to promote preventive campaigns and implementation of the UN Convention against 'Transnational Organised Crime and its protocols on Smuggling of Migrants and Trafficking in Persons'. The association agenda, which was launched in 2010, further reiterated the development of an appropriate legislative and institutional framework related to migration management with the aim of fighting illegal migration, smuggling and trafficking in human beings with the support of the EU (European Commission 2010a).

As in the previous country chapters this section analyses compliance in regard to convicting and punishing the crime of trafficking of human beings, which are included both in the international and the EU law. It is considered compliant when criminalisation of trafficking of human beings is set into national law and when actions toward punishment are carried out in practice through prosecution and punishment.

7.5.1 EU Conditionality, Assistance and Capacity and Technical Expert Groups

In the action plans of 2001 and 2007 the EU committed to the provision of assistance to Ukraine's efforts to combat trafficking in human beings, however, it was not specifically set as a condition for progress. The fight against human trafficking was requested as part of visa free travel negotiations since 2008, like other JHA related issues, before Ukraine could benefit from visa liberalisation, however criminalisation was not particularly mentioned. It instead referred to prevention of trafficking and the need to support victims (European Commission 2010a). Therefore, incentives were low before 2008 and medium thereafter.

The fight against trafficking did not receive any EU assistance before 2006.²⁴⁴ In the indicative papers 2002-2004, 2005-2007, 2007-2010 and 2010-2013 trafficking was only mentioned as a part of the border management section whose actions would indirectly support the fight against trafficking, thus, treating trafficking from the perspective of organised crime. This approach aimed to stop trafficking happening at the border rather than prevent people becoming victims on the ground. In 2009, 2010, 2011 no funding was allocated according to Ukrainian country fiche or thematic fiches. Thus, the Aeneas programme has been the only source of funding. It has funded several programmes which have been implemented either by the IOM, ILO or local NGOs.²⁴⁵ The first project called ‘Combating Trafficking in Human Beings’ was implemented by the IOM in Ukraine and Moldova with financial support of €1.7 million between December 2006-2008. The second programme called ‘Elimination of Human Trafficking through Labour Market based Measures in Ukraine and Republic of Moldova’ donated again for the two countries €748.492 in a project implemented by the ILO from November 2006 to November 2008. Thirdly, Aeneas funded a ‘Safebridges for Migrant Workers Initiative’ covering again the two countries with €701,214 assistance between February 2008-2011. The initiative was implemented by a group of third level sector partners.²⁴⁶ The total allocation was under 4 million.²⁴⁷

In addition to this limited financial funding, there have been no TAIEX or Twinning programmes orientated toward trafficking in Ukraine.²⁴⁸ EU agencies which are responsible for other issues such as border management have only contributed indirectly with enhancing border controls, such as FRONTEX and EUBAM. The Europol also has a mandate for counter trafficking and with whom Ukraine had talks about strategic cooperation on 13 October 2008. The Söderköping process has been facilitating cooperation and workshops to counter trafficking in Ukraine since 2004.

In sum, the EU’s effort to influence the fight against trafficking of human beings in Ukraine was low at all levels until 2006 when the EU supported through some projects

²⁴⁴ All the EU annual action in programmes and thematic fiches and country strategy papers reviewed

²⁴⁵ Istituto Sindacale per la Cooperazione allo Sviluppo ISCOS-Cisl; Veneto Lavoro/ Veneto Region, Italy; IAL Friuli Venezia Giulia, Italy; CSRM Moldovan Trade Union, Moldova; Federation of Trade Unions of Ukraine (FPU), Ukraine; Free Trade Union Confederation of Ukraine (KVPU), Ukraine

²⁴⁶ Istituto Sindacale per la Cooperazione allo Sviluppo ISCOS-Cisl; Veneto Lavoro/ Veneto Region, Italy; IAL Friuli Venezia Giulia, Italy; CSRM Moldovan Trade Union, Moldova; Federation of Trade Unions of Ukraine (FPU), Ukraine; Free Trade Union Confederation of Ukraine (KVPU), Ukraine

²⁴⁷ Author’s interview with an interviewee no. 49, Kiev, 2009.

²⁴⁸ See: list of all Twinning programmes available at: http://twinning.com.ua/index.php?option=com_content&task=view&id=378&Itemid=156.

the fight against trafficking. Since 2008 the EU offered the direct conditionality of visa liberalisation with the fight against trafficking being one of the requirements. Financial assistance has been low in comparison to other issue areas.

7.5.2 Domestic Conditions and Costs

Costs of criminalising trafficking at the legislative level were low as structural changes were not required and an amendment to existing legislation was sufficient because the punishment of trafficking was already set in the criminal code in 1998. The criminal code was then amended in 2001 and again in 2006. The general human trafficking draft law in comparison was costly as it was focused on all aspects of the fight against human trafficking and adoption would have meant a commitment for increasing the budget for each oblast responsible for their own contra-trafficking work which under the current budget was only around \$500 per year.²⁴⁹

Practical implementation faced high costs as it added stringent conditions for imprisonment and a large amount of punishable offences which involved higher economic costs for the government to imprison and prosecute criminals. Previously only a very few cases had actually been punished and instead of imprisonment traffickers had only been required to pay small fines (TIP 2001). Training of police forces and courts were also necessary, thus, generating costs as previously they were hesitant to approach potential criminals and also the courts were uncertain in giving sentences.

7.5.3 Macro and Micro Level External Pressure and Support

There are multiple organisations involved in Ukraine supporting the formal and implementation aspects of the fight against trafficking. The main cooperation partners with the Ukrainian government's effort are OSCE, IOM, and the International Women Rights Centre 'La Strada – Ukraine' (Ukraine Scorecard 2010). The IOM and OSCE have been providing advice and assistance on law drafting e.g. in 2009 in regard to the new draft law on trafficking.²⁵⁰

The IOM has provided monitoring on the situation and the information is very valuable, taking into consideration that the government is not fully aware of the situation because victims' low trust in officials prevents them from reporting to state authorities (Gerasymenko 2011). Statistics demonstrate very different scales of the problem. When

²⁴⁹ Author's interview with an interviewee no. 49, Kiev, December 2009.

²⁵⁰ Author's interview with an interviewee no. 49, Kiev, December 2009.

the IOM assisted in its first nine months 539 victims the MoI reported that there were only 359 victims in the whole year. When the MoI, in 2010, demonstrated positive dynamics of victims dropping to 277 the IOM at the same time provided assistance to 1,085 people (Gerasymenko 2011).

In the preventive sector La Strada and the ILO have been the main organisations assisting Ukraine since 1997. Prevention of trafficking has focused on the promotion of human rights, gender equality and education on labour migration. The IOM has also been cooperating with many local NGOs in each oblast. The IOM's goal to train the local sectors to help themselves since early 2000 has been successful.²⁵¹ Furthermore, on a practical level assistance for victims is facilitated by the IOM including legal assistance, consultation and representation for victims in criminal cases and availing of psychological counselling.

7.5.4 Process and Current Status for Formal and Behavioural Compliance

The act of trafficking was criminalised in Ukraine already in 1998 before the EU had got involved in Ukrainian trafficking issues. Article 124-1 set legally binding sanctions for the crime of trafficking (Pyshchulina 2003). However, it lacked clear definitions of the crime and often a term such as 'exploitation of work' was interpreted in different ways and therefore aspects of the crime of trafficking were sometimes overlooked (Pyshchulina 2003). In addition, law enforcement was not always aware of the new procedures that this law would entail, consequently police and responsible officials were hesitant to investigate allegations of trafficking and prosecutors to initiate new cases (Pyshchulina 2003).

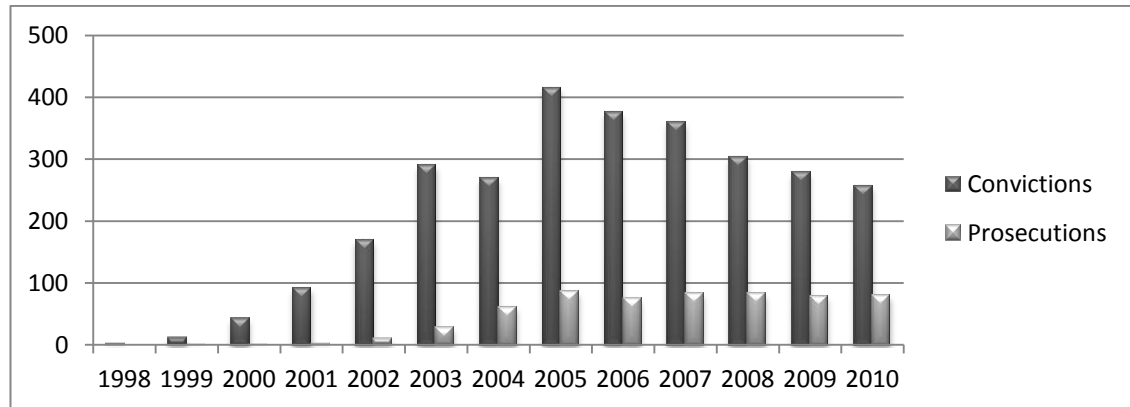
The new criminal code came into force in September 2001. It established a penalty of 3 to 8 years imprisonment and 'in the presence of other aggravating circumstances, the sentence is increased up to 15 years imprisonment. However, as it defined trafficking as something taking place across international borders it ignored that there were many cases where victims were only moved from one region to another and therefore the law did not apply to those traffickers (Pyshchulina 2003). Another issue that was not noted in the law was that often trafficking took place through employment agencies, thus, legalising this activity and the law did not require agencies which were involved in practicing this type of activity to discontinue (Denisova and Hughes 2007).

²⁵¹ Author's interview with an interviewee no. 49, Kiev, December 2009.

In 2006, the criminal code was amended to address the full range of trafficking crimes and satisfied the requirements of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (TIP 2009) and it was recognised that it prescribed sufficiently stringent penalties.²⁵² Therefore, it is considered that criminalisation of human trafficking was compliant with the EU and international standards in 2006.

The practical application of prosecution nevertheless has not taken place between 2001 and 2011 according to international or European standards. For the whole time period TIP reports and the EU progress reports demonstrate that even if the law had criminalised trafficking since 2006 on the practical level the law enforcement system has failed to act according to the law. Where imprisonment should be given, depending on the situation, from 3-8 years and in aggravated circumstances up to 15 years, in practice the local police and judges who carry out prosecutions and convictions give more often probation and small fines than actual prison sentences (TIP 2008-2011).

Table 7.4 Human Trafficking Convictions and Sentences in Ukraine



Source: Author's constellation of available data from TIP Reports

7.5.5 Conditions for (non)Compliance and Logic of Compliance

7.5.5.1 Formal Compliance

Compliance has taken place in 2006 under conditions of high expectations for receiving EU membership and high identification, without incentives, high legitimacy, low EU support or agencies, high amounts of international support and low costs. As there were no incentives from the EU and little EU programmes suggests that Ukraine was

²⁵² See: ENPI 2011-2013.

following the more established international organisation's best practice.²⁵³ Therefore, the EU's direct influence at the formal level was not present but rather compliance took place because of international organisation support and due to low political costs of adoption.

7.5.5.2 Behavioural Compliance

The practical application has not taken place according to international or EU standards as only a few of the crimes are actually sentenced, even if it has been lately increasing, and often they are receiving probation instead. The main reason, according to international experts is corruption. For instance, it has been reported that police and border guards take bribes to overlook trafficking and also judges take bribes to give lighter sentences (TIP 2012) Even if there is little international influence to curb the lack of punishments, international organisations are assisting Ukraine in fighting corruption.

The EU has not had a role in enhancing the criminalisation system as while the EU incentives were also covering the fight against human trafficking it did not specifically address other aspects except for prevention and supporting victims in regard to the visa liberalisation plan. The financial assistance in the sector is also minimal. A trafficking expert commented EU funding only helping to carry out some administrative tasks but overall as insufficient.²⁵⁴ Thus, the EU's only asset is indirectly as a side product of other more security driven goals for the EU such as illegal immigration and border management. For instance, the efficiency on the EU borders since the Schengen regulation has contributed to stopping traffickers.²⁵⁵

In general, implementation has been weak due to corruption at the domestic level and the EU's role in supporting it has also been low as the EU has not had much influence on either decision making or practical implementation of the law due to its non-committed nature to the issue demonstrated by its governance techniques. This has also been noticed at the Ukrainian level, describing the EU action as being miniscule when first of all the international organisations have set the standards they follow and as their perception is that the EU in general is not interested if it 'does not benefit from it'.²⁵⁶

²⁵³ Author's interview with an interviewee no. 49 and an interviewee no. 44, Kiev, December 2009.

²⁵⁴ Ibid.

²⁵⁵ Ibid.

²⁵⁶ Author's interview with an interviewee no.65, Kiev, Dec 2009.

Thus, the lack of commitment at the domestic level and the EU's interest to have more influence still reminds of the situation that was the case already in 2001: NGO's and locally trained groups are supporting efficiently the victims in each oblast²⁵⁷ and NGOs and specially trained units are relied upon by the government to investigate crimes (TIP 2001).

Table 7.5 Conditions for (non)Compliance - Fight against Human Trafficking in Ukraine

Ukraine	EU Membership Prospect	Identification with the EU	Clarity and Size of Issue-Specific Incentives	Financial Assistance	Technical Cooperation	Legitimacy	Political Costs	Economic Costs	External Pressures	Formal Compliance	Behavioural Compliance
Human Trafficking	+/- until 2002	+/- until 2002	- until 2008	- until 2006	-	+	+	-	IOs and NGOs since 1990s	+ 2006	-
	+ until 2007	+ until 2007	+/- since 2008	+/- since 2006							
	+/- until 2011	+/- until 2011									

*Low cost marked + (referring to a favourable element for compliance and vv).

7.6 Conclusion

This chapter discussed the EU approaches and domestic conditions and responses for approximation with the EU action plan recommendations in four selected issues of the action plan: border guard reform, readmission agreement, asylum protection and punishment for the crime of human trafficking in Ukraine.²⁵⁸ The assessment considered compliance both at the formal and behavioural level. Promoting compliance with its standards in the JHA sector in Ukraine, similarly to Georgia and Moldova, the EU only used direct conditionality and high amounts of financial assistance in the border management and readmission sectors.

Compliance took place at the legislative level in the border guard reform sector, in regard to the readmission agreement, and in criminalisation of human trafficking, but only partially in regard to the asylum protection sector. Behavioural level compliance overall had a lower success rate and took place partially in the border guard reform

²⁵⁷ Author's interview with an interviewee no. 49, Kiev, Dec 2009.

²⁵⁸ See summary of results p. 223.

sector with functioning as a law enforcement agency but not fully using professional staff instead of conscripts. Preparation for implementation of readmission agreement was also only partially compliant. Ukraine formed readmission agreements with countries beyond the EU and facilitated reintegration for own citizens but did not fully address human rights standards of detainees or made the readmission facilitation easier with the EU states by signing implementation protocols. In the asylum protection sector behavioural compliance was not successful at any level except for providing ID cards to refugees since 2004. Punishment for human trafficking was also lacking at the implementation level.

The overall membership perspective in principle still being available and identification with the EU did not promote compliance except for the years before and around the Orange Revolution when expectations of EU membership were supporting its formal compliance. However after the Orange Revolution when the standstill in political decision making standstill became evident, Ukraine has not been so interested in committing itself to expensive reform before it sees ‘the end goal’ while Moldova has taken the route to commit to change as long as it will be enough for the EU to accept it.

Overall, the EU’s leverage influencing convergence toward its standards has been possible through offering strong clear incentives, but only at the formal level, or when Ukraine itself has chosen the EU as a framework for its own reforms and if it has seen it to be the most beneficial. At the implementation level not even the visa liberalisation incentive was initially enough to support convergence. At the implementation level the EU only had leverage when it was supporting capacity building through financial and technical assistance in the areas which Ukraine itself did not consider pivotal or have capacity for. When in other areas except for border guard reform, the EU’s contribution was small, the local civil society actors and international organisations have been contributing to convergence toward EU and international standards.

Therefore, in the future it can be expected that the EU can promote compliance through issue-specific incentives and financial assistance. In some issue areas it also can be important as a framework to refer to when Ukraine aim converge towards the EU standards.

8. Conclusion

8.1 Overview of the Thesis

The early Europeanisation literature assumed that the EU's influence is low in the neighbourhood as the EU was not able to use EU membership as an incentive to encourage compliance with the EU standards. Nevertheless, since the first EU progress reports were evaluated the countries' progress toward the EU standards demonstrated some convergence. This research aimed to solve the puzzle of why countries comply and what is the leverage and limitations of the EU's influence.

The research framework and hypotheses were built on the basis of the previous findings in the Europeanisation and external governance literature while theoretically drawing on new institutionalist rational choice and constructivism. Acknowledging that the Europeanisation literature had concluded the EU's influence to be limited without being able to use an EU membership incentive, and external governance literature expects that compliance is related to issue-specific conditions, the thesis constructed a framework to answer the research questions of the EU's influence. Instead of treating the EU incentives as a starting point for the analysis or contrasting the variables depending on whether they were drawn from rationalist or constructivist origins, this research laid out a variety of independent variables which varied both at the domestic and issue level, their logic of origin and also took into consideration potential external factors which could impose cross-conditionality or cross-socialisation. In doing so the analysis of the EU's influence first considered under what conditions compliance takes place and why do countries comply before coming to conclusions on whether this compliance or non-compliance was related to the EU. This approach was aiming to eliminate bias and overestimation of the EU's influence which has been identified in some Europeanisation research (Schimmelfennig and Scholz 2007:4).

The research examined the EU's influence through the ENP in its Eastern neighbourhood by studying levels of compliance with the EU's JHA standards in Georgia, Moldova and Ukraine. Compliance was analysed both at the formal and behavioural levels within four JHA issues: border guard reform, readmission agreement, asylum and refugee protection, and criminalisation of human trafficking from the year 2000, when the EU began to increase its attention toward the neighbourhood, until the end of 2011 when discussions on the association agreements with the states had started.

The first three chapters of the thesis explained the puzzle, previous literature and the methods for research. From chapter four onwards the empirical data were presented. Chapter four focused on the macro conditions: the strength of the EU membership prospect and identification with the EU. Chapters five, six and seven were country specific chapters focusing on the evaluation of the micro level conditions: incentives, financial assistance, technical cooperation, costs and also the external factors which varied across countries, issues and logic of action before the coded data were collected on a raw data table which functioned as the basis of the analysis.

This final chapter presents the summary of what leverage and limitations the EU has in the neighbourhood to promote convergence towards its standards. The second part of the chapter summarises the findings and presents the main arguments on the EU's leverage and the conditions under which it can have influence. The third part discusses the main challenges to the EU's influence. The fourth part elaborates on the contributions and limitations of the research and potential for their generalisation. The concluding part presents further avenues for research.

8.2 Summary of Research Findings

This section presents findings and demonstrates the patterns of conditions which were found to be conducive for compliance. By doing so it is able to illustrate that the findings confirm, but also to some extent challenge, the previous Europeanisation literature and external governance literature.

Through analysis of compliance at the formal and behavioural level this research makes the following conclusions: 1. When the country had expectations of potential EU membership there were signs of convergence even before an issue-specific incentive was set. Under the expectations for EU membership countries also demonstrated willingness to comply with all sectors if they had capacity to do so rather than selecting between the sub-issues of the sector; 2. The EU was able to have influence without a membership incentive through issue-specific incentives but only if the costs were covered and if there was no cross-conditionality at the same time; 3. Legitimacy and identification did not make a difference for the EU's capacity to promote compliance because if the EU did not also offer incentives, countries chose to follow international organisations as a framework for converging their laws; 4. If no cross-conditionality or socialisation was present and the country found the EU standards as an example for domestic reform the EU was able to have influence without incentives.

8.2.1 Formal Compliance with the EU Recommendations

At the formal level all of the issues which showed compliance and were traced back to the EU demonstrated that compliance was only possible under conditions of clear issue-specific incentives, if economic costs had been overcome through financial assistance, and when countries still had at least some expectation of the potential for EU membership in the future. Under the same favourable cost-benefit issue-specific conditions, but under high identification with the EU, and without EU membership expectations, compliance was not EU related, except in limited cases where an external trigger (Russia) created additional pressure for adoption of the rule. More often the issue was complied with because it was already part of the domestic plan, or because cross-conditionality or cross-socialisation was triggering compliance.

The cases following the described pattern, where the EU was able to trigger compliance through the combination of rationalist factors, took place in Moldova and Ukraine both with border management and readmission agreement issues and also in the asylum sector for subsidiary protection approximation in Ukraine in 2011. All the cases demonstrated that they complied with the EU recommendation due to favourable cost-benefit calculations and thus at the formal compliance level the EU's influence was best explained by the rationalist logic.

The argument that issue-specific conditions on their own were not enough for the EU to trigger compliance was further strengthened by two other findings drawing from Georgia's experience and in regard to the motivations for compliance of Moldova and Ukraine expressed in the interviews. Firstly, while Georgia had the same conditions as Moldova and Ukraine in border management and in the readmission agreement area, the border management compliance was traced back to the NATO incentive and in the readmission case to Georgia's own relations with Russia. Even if the EU requested border management reform in fact the reform had already started as part of the NATO incentive plan. In addition, the readmission agreement was just being negotiated when the completion of the Russian visa facilitation agreement with the EU prompted Georgia to also aim for visa facilitation.

Secondly, indications of the membership expectation were found in the case of Moldova and Ukraine which supported convergence toward EU standards even before the clear incentive was set. For example, Ukraine at the highest moment of Europeanisation expectation during the Orange Revolution started to approximate some of the laws

toward EU standards even before the action plan was launched. Moldova also made efforts to converge toward laws in the readmission agreement even before negotiations had started and also interviews confirmed that Moldova in the asylum sector took initiative to comply with laws and their practical application even before EU suggestions, especially after the new government's aim for European integration.

Despite these issues, the EU's influence as a triggering power was not present in other cases at the formal level. In other areas in Moldova and Ukraine the compliance levels were traced back to other organisations promoting the same standards as the EU. For instance, in Moldova and Ukraine the asylum sector's partial compliance was related to the UNHCR cooperation and countries following the UN regulations as guidelines. In the human trafficking sector cooperation with the IOM, and similarly drawing on UN regulations, triggered compliance. Therefore, influence in these sectors is best explained through socialisation and capacity building assistance. In Georgia the lack of the EU's influence was evident across all the issues at the formal level as Georgia was influenced by other organisations' conditionality or socialisation rather than the EU's approaches.

In sum, at the formal level the EU had the most influence in Ukraine and Moldova in the issues of border management and readmission through incentives and assistance to cover economic costs and due to a lack of political costs, thus demonstrating the EU's influence was most efficient through the rationalist logic. The EU was least efficient in Georgia even if in general Georgia was the frontrunner in the formal level reforms. The sectors where the EU was least efficient in promoting convergence with its standards was in the asylum and human trafficking sectors where the EU did not offer incentives and only provided low levels of assistance and where countries followed the regulations set up by other international organisations rather than referring to the EU standards. The only example of the selection of EU rule complementing UN standards was in Ukraine when after the visa liberalisation action plan it complied with subsidiary protection regulation. Thus, it suggests EU rationalist variables were able to explain compliance whereas legitimacy, technical cooperation, and specialist agencies were not able to explain the ability of the EU to promote convergence at the formal level.

8.2.2 Behavioural Compliance with the EU Recommendations

Behavioural compliance levels indicated a more varied pattern across countries and issues than the formal level. The results demonstrated that the EU was able to promote compliance on its own or in cooperation with other international actors. The results

indicated that EU leverage to have influence at the behavioural level was both triggered by the logic of cost-benefit calculations and also was evident through capacity building and the EU system working as a framework to refer to. Membership expectation seemed to be less important to encourage compliance at the behavioural level.

The EU on its own was able to promote convergence under two different patterns of variables. Firstly, at the behavioural level it was able to have influence under high incentives, high financial assistance covering high economic costs and political costs being low indicating that rationalist factors were explaining compliance. Secondly, it was also able to have a direct influence through capacity building and as a framework which resembled the sociological institutionalist/constructivist explanation model.

First, the rationalist conditions that were able to explain compliance at the behavioural level were present in two cases. Moldova and Georgia were complying with all of the four readmission agreement related factors at the behavioural level whereas Ukraine was complying with just two of the four issues. The lower economic costs of compliance were explaining the overall higher compliance in Moldova and Georgia.

Second, the EU was able to have direct influence only through capacity tools in the case of justice sector reform in Georgia, being the main implementer and assistance provider in the sector, which facilitated the criminalisation of human trafficking. In addition, the EU was able to attract convergence through EUBAM and being selected as a framework due to the lack of other models in the case of border guard reform and training in Moldova and Ukraine, also demonstrating constructivist factors explaining compliance. Thus, the logic when compliance took place at the behavioural level was both explained by rationalist choice and capacity building but also by socialisation factors.

Apart from readmission agreement compliance and justice sector reform there were no other issue areas with full compliance which were triggered by direct EU influence. Neither were there other issues where full compliance would have been triggered by other international actors. There was however some issues where partial compliance had taken place. The EU had a partial role in cases of border guard system reform and training in all three countries, especially demonstrating the role of EUBAM and its capacity building programmes and in the sector of asylum in an ad-hoc manner through initiating the creation of accommodation centres according to the asylum sector request in Moldova and Ukraine.

Thus, at the behavioural level the EU's influence was evident to some extent across all issue areas and was most evident in Georgia and Moldova and least in Ukraine. The EU's influence was traced back to its capability to use incentives and assistance, and cooperation capacity programmes.

8.3 The Main Challenges to the EU's Influence

Despite evident influence of the EU in some issue areas, there were also many cases where the EU was not able to have influence. The lack of the EU's ability to promote compliance was especially present at the behavioural level and was overall found to be related to three main reasons.

Firstly, if the economic and political costs were higher than expected benefits, especially when no membership expectations were present, this stopped or slowed down compliance. Secondly, if cross-conditionality or cross-socialisation were present when the EU had limited involvement countries chose other international organisations as a framework. Thirdly, the EU's own different intensity of engagement correlated with the levels of EU induced compliance. Overall, countries with less EU membership expectations, issues with low EU incentives, low assistance and low amounts of technical cooperation, and high costs and strong involvement of other organisations in the issue area resulted in low EU ability to promote compliance. This section will elaborate on these conditions to further explore the limitations of the EU's influence related to domestic conditions, cross-influences and its own approaches.

8.3.1 Domestic Conditions Restricting the EU's Influence

The domestic conditions which limited EU influence were related to economic costs, rising from the lack of capacity and corruption, Soviet-inherited state structures, and the political costs which occurred due to different perceptions of the priorities.

Firstly, the lack of capacity and the state structures which were a consequence of the previous Soviet system were impacting all of the countries' border guard systems. Poor working conditions and low wages were complicating reform at the behavioural level because these conditions made border guards vulnerable to bribery and they were eager to move to new and better jobs after only a short time in service. This frequent change in the posts meant that those who were trained according to new reformed standards did not pass over the learned information.

Second, corruption was found as one of the reasons, especially in Moldova and Ukraine, contributing to the lack of progress in complying with the EU recommendations in the area of the fight against human trafficking. Prosecutions of the high level officials involved in trafficking were overlooked or given small fines instead of prison sentences.

Thirdly, the lack of political will also complicated the EU's capability to promote influence. Some of the EU promoted issues were not considered as either priorities or as responsibilities of the country and therefore the EU could not attract compliance. Especially in regard to the asylum sector in Ukraine and to a somewhat lesser extent in Georgia it was found that decision makers did not consider asylum seekers as the country's responsibility. It was felt that when there were so many other priorities considering their own nationals, taking care of foreign nationals came secondary within the limited budgets they had.

8.3.2 Cross-Conditionality and Socialisation reducing the EU's Capacity to promote Compliance

In addition to costs, cross-conditionality and cross-socialisation seemed to distract compliance with the EU especially when there were no expectations for EU membership and in cases where the EU used limited conditional incentives, assistance or technical cooperation. Firstly, in Georgia the lack of membership expectations and attraction of NATO membership made it choose border guard reform according to NATO's model rather than the EU being able to have influence at the formal level. Secondly, across the countries where the EU did not use clear incentives, and only provided limited amounts of assistance and technical cooperation, the countries were referring to the UN regulations rather as their model for convergence. This was evident in both the asylum and human trafficking sectors across countries until the EU initiated the visa liberalisation plan in Moldova and Ukraine which just in 2010 onwards prompted and demonstrated the EU's capacity to promote convergence through incentives. For instance, Moldova requested a review of the current laws to determine whether they adhered also to EU standards with the help of international organisations after the 2010 incentive. Since the visa liberalisation incentive Ukraine adopted subsidiary protection regulations because they did not incur high costs.

8.3.3 The EU's own Limitations contributing to the Lack of the EU's Leverage

Despite the ENP's normative outlook, the EU approach in the neighbourhood was also evidently geared toward enhancing its own security. The EU was giving less attention,

financial assistance or incentives in the areas of asylum system reform and fight against trafficking in comparison to border guard reform and readmission. Across the countries border guard reform and readmission agreement were linked directly to the EU incentive of visa facilitation and later to visa liberalisation and was assisted through EUBAM, EUMM and also received a large majority of the EU assistance (see figure 10). In the asylum and fight against trafficking sector the countries' incentives were not present before the visa liberalisation plan since 2010, assistance was limited and only small technical projects took place rather than the EU contributing to the system development as a whole. As a consequence this approach in the asylum area was not well received, especially in Georgia and Ukraine who saw little point in spending their own money for other countries' citizens if it was not paid for them. In the trafficking against human beings sector interviewees confirmed in Moldova and in Ukraine that financial assistance from the EU was found to be inadequate.

Thus, the EU's influence in regard to the four issue areas demonstrated a clear pattern in that the EU's influence was limited in the asylum or trafficking against human beings sector because of the high costs, having other actors offering more attractive models for socialisation and also due to its own limited contribution.

8.4 Research Contribution, Limitations and Generalisation

8.4.1 Research Contribution

These findings make three important contributions. Firstly, this research contributed to Europeanisation and external governance literature by clarifying the role of the EU's influence without the EU membership incentive. Secondly, it created new empirical knowledge on the current migration related issues and in general on the domestic conditions of the three states. The third contribution was the constructed framework for the research which did not contrast variables but utilised a selection of variables, reflecting both rational choice and sociological institutionalist origins crossing country and issue levels, and thus was able to come to reliable results on the EU's influence. In addition, it introduced new variables which are important to pay attention to in the future research in the countries without a certain EU membership incentive.

Firstly, there were two starting points for this research. The first was Europeanisation literature which suggested that without a credible EU membership incentive the EU's influence will be limited in the neighbourhood (i.e. Kelley 2004; Sedelmeier and

Schimmelfennig 2005) and therefore socialisation tools may be more conducive for compliance in the neighbourhood (Kelley 2005; Sasse 2006; Schimmelfennig and Scholz 2007). The second starting point was that the external governance literature suggested issue-specific conditions would be determining the EU's influence in the absence of a credible EU membership incentive (see i.e. Sedelmeier and Epstein 2008).

The findings of this research partly challenged the above but also partly produced similar results. While the research results agreed with the Europeanisation literature in that the EU's influence is decreasing from the countries where the EU is able to offer an EU membership incentive in comparison to the countries of post-accession and then the ENP states, it also confirmed that a credible EU membership incentive is not a necessary condition for compliance with the EU standards. It however also demonstrated that when countries still saw the EU membership as a distant potential they were more uniformly willing to comply. When no expectations of EU membership existed the issue was only complied with if the costs were covered and if no other conditionality was introduced by other actors. Countries chose international organisations' standards over EU standards if there were no incentives, low assistance and cooperation with the EU on the topic.

The research results also agreed with the external governance literature in that research should be focusing on studying issue-specific conditions instead of determining low convergence due to lack of the EU membership prospect. However, in comparison to some recent research (i.e. Freyburg *et al* 2011) this research did not find as strong evidence towards the EU's influence in the issues where there were also other international organisations either offering incentives or which were more established in the area of the promotion of human rights. In the codified cases where there was high legitimacy it was not possible to find the link between compliance and the EU trigger but rather that the convergence toward the EU (and international) regulations was related to the countries willingness to follow international organisations' standards. Overall, this research, through the in-depth study of three countries and three issue areas, gave a nuanced understanding of the EU's influence without a membership incentive and contributed to the Europeanisation and external governance literature through the finding that issue-specific decisions are made both on the domestic and external setting.

Secondly, this research produced new empirical knowledge on the three countries' relationship with the EU, giving an overview of the status of the state in regard to expectations of membership and also the levels of identification which have previously had little in-depth attention. It also produced in-depth information on the policy development and reform levels in migration related issues in the three countries. Understanding the country and external context is useful for the creation of assumptions of the potential reactions in regard to other sector areas where international influence is present. Thus, this new empirical information is beneficial for informing the logic of the countries' responses to international influence which help to create assumptions of the best possible policy tools and strategies for the international actors to gain responses to their recommendations.

This issue-specific empirical information, which took a close account of the migration related law adoption and practical application, is contributing to previous data which has been scarce especially in Georgia and Moldova when most previous research on the ENP countries has been interested in conflict resolution and the energy or trade sectors. In addition, the previous research on the JHA sector was not considering the variety of issue areas within the JHA separately but only treated the JHA sector as one issue. The overview of the status of where countries are now is important especially with regard to currently topical visa liberalisation talks.

Thirdly, this research also contributed with its analytical framework to the current studies which aim to understand international institution's transformative power. The framework intended to address some of the previous weaknesses which were identified in the literature. The previous literature identified that the EU's influence was potentially overestimated in promoting convergence, having focused only on studying the CEECs, where the EU membership was credible and not adding more variance by also studying countries with no membership incentives (Schimmelfennig and Scholtz 2007). In addition, previous literature has also been challenged in terms of how to separate external influences from the EU's influence (Keohane and Millner 1996) or from the other domestic influences (Hurrell and Menon 2003). These issues were addressed in this research through the framework which studied macro and micro related conditions which had origins both in rationalist and constructive explanations and also accounted for external influences in terms of cross-conditionality and socialisation in order to account for all possible explanations for compliance. In

addition, the benefit of this framework was that it placed the EU's influence in the wider context in regard to other international actors.

8.4.2 Limitations and Generalisation of the Research

While this research and its methodological choices made possible a detailed view of the conditions which mattered for compliance at the domestic and issue level and allowed recognition of new explanatory factors for compliance beyond the EU's influence, there are also some limitations in this research.

Firstly, identification with the EU was a complex issue to operationalise and measure. It was challenging first of all in regard to being able to separate whether the orientation of the countries toward the EU was truly reflecting identification with the EU's values, identity and belonging rather than just orientating toward the EU to gain expected benefits. The second challenge with the identification was in terms of differentiating between the identification with the EU values and western values which were often overlapping. Despite these challenges the operationalisation of identification, after finding reliable data sources for measuring separately identity, preferred values and feeling of belonging through Manifesto Group data based on political party representative surveys, allowed the measurement of identification with the EU. Manifesto Group provided information on different values between the countries' motivations to get closer to the EU in terms of benefits and identity and also allowed the assessment of the countries' views of the West and the EU. While acknowledging the difficulty to achieve totally accurate results, these findings, which allowed variation between the countries, were sufficient for the purpose of this research in detecting the role of macro and micro variables.

The second limitation of the research was the selection of the most likely cases for research as it has some limits in regard to generalisation of the results. The research design was selected to represent three countries, which were most likely for the EU to have influence on, in order to be able to bring in-depth understanding of the causal links which would have been difficult to produce if the research would have focused on the countries where little cooperation was taking place such as Belarus or Azerbaijan. The selected countries was also quite similar to each other in comparison to contrasting them for instance with Mediterranean neighbours. However, as the focus was specifically to understand the causal links in the situation where there was no certain membership

incentive but also in a situation where countries had some hopes for it, these three countries served the purpose of this study.

Under these limitations, how far can the research results travel from this research? While evidently the most likely cases are less suitable for generalisation, this research can however generalise results at least in two aspects. On the basis of the findings, that the EU's influence is dependent on the issue, external and domestic contexts, the information can create future expectations of the leverage and limits of the EU in other countries, in other issue areas and to create future expectations in the three countries having understood the domestic motivations and external environment in the countries.

Firstly, it is possible to expect that the influence reduces from the candidate states to EU neighbourhood countries. However, the EU can still have influence if the cost-benefit calculations are favourable and no better cross-conditionality is presented. It is possible to expect that without countries aiming for membership the EU can have better influence in the countries which are smaller in size as the costs will often be higher in a large country like Ukraine.

Secondly, the research results also allow generalisation and further hypotheses in regard to issue areas. The research demonstrated that the EU was using only incentives in the areas which had more security importance to the EU and less in the areas where issues were referring to international organisations' standards. Accordingly it can also be expected that the EU's influence in the other issue areas, such as environment or education can be stronger than for instance in other human rights related factors (where other organisations pose cross-conditionality or cross-socialisation) or in energy or trade (which are highly sensitive issues especially in the East in regard to Russia's role).

Thirdly, learning about the country conditions and external setting in the three countries it is also possible to make future assumptions on the countries further compliance in regard to different issue areas. As it was found that countries were responsive not only to issue-specific conditions but also that the domestic perceptions and external context was determining whether to comply or not, it can be expected overall that Georgia will make its decisions on the basis of whether the EU issue suits their domestic plan and whether there are other sources of cross-conditionality or socialisation. Moldova will comply with the issues where it has enough capacity as it still expects EU membership. Ukraine is expected to consider each issue specifically on a cost-benefit basis. In this

light the research results demonstrated that it is important to keep the membership perspective aspect open to those countries which still can be motivated by it such as in the case of Moldova in order not to break the momentum which Ukraine previously had during the Orange Revolution. In addition, it was demonstrated that if the EU wants to influence it needs to be willing to support assistance for the economic costs, as without it, it is unlikely to have influence. Overall, the lessons from the research results show different responses to EU triggers and emphasise that the EU approach should be differential to each country.

8.5 Future Research Avenues on the EU's Influence

Empirical analysis showed that the EU had influence in the neighbourhood and the conditions under which it took place. These results suggested some generalisations for the research of what could be expected in regard to country conditions, issue areas and also in the three countries where the domestic and external setting of the countries through the research became familiar.

While these three areas of generalisation provide some further expectations of the potential EU influence, further research would be beneficial to test new hypotheses. Firstly, in regard to the findings about costs being apparently higher in larger countries, a variety of large and small countries could be tested in order to clarify whether it was the costs which were responsible for the lack of compliance and to assess whether some domestic characteristics such as identification with the EU could still hold some importance in the EU's capability to promote convergence.

Secondly, in order to clarify the EU's influence in the neighbourhood and to test the importance of the suspected difference that the domestic situation and external setting makes, it would be beneficial to test how similar issue-specific settings would be responded to differently in the context of strong cross-conditionality and socialisation and in areas where other actors' influence is not present. This would allow further understanding about the EU's influence as an international transformative power and also how it rates in regard to other pressures.

Thirdly, research could also take place to test whether the hypothesised future compliance patterns hold in regard to three countries and thus draw expectations of the EU's influence in the three countries also in other issue areas. The research results suggest that Georgia is complying with the EU recommendations if the issue conforms

to its own plan and if there are no other cross-influences, Moldova is complying across all sectors with the EU recommendations where it has capacity and Ukraine is complying only if the costs of compliance are covered.

While there are many research questions in the future to be explored in order to further advance the knowledge on the EU's domestic influence, this research contributed to the current literature with some empirical knowledge showing that influence has taken place through the EU's governance tools by focusing on four JHA issues and Georgia, Moldova and Ukraine, even if it was more limited than through enlargement, as Prodi envisaged in 2002. This research also importantly recognised the EU's influence is differential according to country, issue and external context and provided a framework for further research for exploring the EU's leverage and limitations.

Appendix

List of Interviews

Interviewee no. 1, EUBAM, Odessa, 27/03/2009, (group interview).

Interviewee no. 2, EUBAM, Odessa, 27/03/2009, (group interview).

Interviewee no. 3, Razumkov Centre, Kiev, 03/04/2009 (group interview).

Interviewee no. 4, The Institute for Development and Social Initiatives ‘Idis Viitorul’, Chisinau, 26/03/2009 (group interview).

Interviewee no.5, interviewee who preferred to stay anonymous, Kiev, 02/04/2009.

Interviewee no.6, Our Ukraine party representative, Kiev, 03/04/2009 (group interview).

Interviewee no.7, Our Ukraine party representative, Kiev, 03/04/2009 (group interview).

Interviewee no. 8, Razumkov Centre, Kiev, 02/04/2009 (group interview).

Interviewee no. 9, Anti-Trafficking and Gender Officer, OSCE, Chisinau, 25/06/2010.

Interviewee no. 10, EuropeAid, Brussels, 24/06/2011.

Interviewee no. 11, DG Home Affairs, Visa and Readmission, 23/06/2011.

Interviewee no. 12, EU Delegation, Chisinau, 21/06/2010.

Interviewee no. 13, Independent Analyst, Chisinau, 24/06/2010.

Interviewee no. 14, Desk Officer for Ukraine, DG EEAS, Brussels, 21/06/2011.

Interviewee no. 15, MP, Party of Region, Secretary of National Security, Kiev 01/04/2009.

Interviewee no. 16, Deputy Director, Centre for Adaptation, Kiev, 15/12/2009.

Interviewee no. 17, Head of Economic and Political Section, European Commission’s Delegation to Moldova, Chisinau, 28/03/2009.

Interviewee no. 18, Second Secretary, Ukraine’s Mission for the EU, Brussels, 22/06/2011.

Interviewee no. 19, DG Home Affairs/Unit A2 Fight against Organised Crime, Brussels, 17/06/2011.

Interviewee no. 20, Centre for Legal Approximation, Ministry of Foreign Affairs, Chisinau, 18/06/2010.

Interviewee no. 21, HUREMAS Officer, IOM, Ukraine, Kiev, 11/12/2009.

Interviewee no. 22, First Secretary, Ukraine's Mission for the EU, Brussels, 22/06/2011.

Interviewee no. 23, Director, APE, Chisinau, 11/06/2010.

Interviewee no. 24, Deputy Head of the International Cooperation and European Integration Department, Ministry of Interior, Chisinau, 25/06/2010.

Interviewee no. 25, MFA Capacity Building in Support of Rule of Law Unit, Ministry of Foreign Affairs, Tbilisi, 05/10/2010.

Interviewee no. 26, Head of Political Analysis and Security Program, ICPS, Kiev, 09/12/2009.

Interviewee no. 27, Desk Officer - Georgia, EEAS, Brussels, 22/06/2011.

Interviewee no. 28, Head of Unit F1 - Geographical Co-ordination Neighbourhood East, EuropeAid, 24/06/2011.

Interviewee no. 29, Officer, EUBAM-Ukraine, 02/08/2011.

Interviewee no. 30, Councillor , Moldova's Mission to the EU, 17/06/2011.

Interviewee no. 31, Team Leader, GEPLAC- Georgia, Tbilisi, 06/10/2011.

Interviewee no. 32, Team Leader, Support to the Implementation of Moldova-EU agreements, Chisinau, 22/06/2010.

Interviewee no. 33, Head of Ukrainian Helsinki Human Rights Union, Kiev, 01/04/2009 (group interview).

Interviewee no.34, Programme Officer, IOM, Georgia, 04/10/2010.

Interviewee no. 35, Director, FES, Tbilisi, 07/10/2011.

Interviewee no. 36, Committee on Integration in Europe, Parliament of Georgia, Tbilisi, 05/10/2010.

Interviewee no. 37, Committee on Integration in Europe, Parliament of Georgia, Tbilisi, 06/10/2010.

Interviewee no. 38, Office of the State Minister of Georgia for European and Euro-Atlantic Integration, Tbilisi, 05/10/2010.

Interviewee no. 39, UCIPR, Kiev, 14/12/2009.

Interviewee no. 40, Programme Officer, Söderköping Process, Kiev, 16/12/2010.

Interviewee no. 41, Political Officer, Delegation of the European Union to Moldova, Kiev, 16/06/2010.

Interviewee no. 42, Liberal Party Advisor, Chisinau, 24/06/2010.

Interviewee no. 43, European Parliament, MEP, Chair for Moldova Cooperation Committee, Brussels, 22/06/2011.

Interviewee no. 44, IOM Ukraine, GUMIRA Senior Officer, Kiev, 11/12/2009.

Interviewee no. 45, Head of Unit for Eastern Partnership and Russia, European Parliament, 23/06/2011.

Interviewee no. 46, Director, Idis Viitorul, Chisinau, 24/06/2010.

Interviewee no. 47, Parliament of Georgia-Committee on Integration in Europe, Tbilisi, 05/10/2010.

Interviewee no. 48, Officer, State Committee of Nationalities and Religion, Kiev, 11/12/2009.

Interviewee no. 49, Programme Officer on Trafficking, Kiev, IOM, Kiev, 15/12/2009.

Interviewee no. 50, Aid and Cooperation Officer, Unit F1 Geographical Coordination Neighbourhood East, 24/06/2011.

Interviewee no. 51, Deputy Head of the Organisation for Security and Co-operation in Europe's Mission to Moldova, Chisinau, 25/03/2009.

Interviewee no. 52, Office of the State Minister of Georgia For European and Euro-Atlantic integration, Tbilisi, 05/10/2010.

Interviewee no. 53, Expert Group, Chisinau, 16/06/2010.

Interviewee no. 54, Programme Officer, Credo, Chisinau 11/06/2010

Interviewee no. 55, Team Leader, CIPDD, Kiev, 04/10/2010.

Interviewee no. 56, Head of OSW, Brussels, 17/06/2011.

Interviewee no. 57, Ministry of Foreign Affairs and European Integration , Bommoluk, Border Guards Human Resource Management project, Chisinau, 24/06/2010.

Interviewee no. 58, Programme Officer, Delegation of the European Union to Georgia, 30/09/2011.

Interviewee no. 59, Delegation of the European Union to Ukraine, ambassador of the European Commission to Ukraine, Kiev, 31/03/2009, (group interview).

Interviewee no. 60, Team Leader EUSR-Georgia 05/08/2011.

Interviewee no. 61, Programme Officer, Delegation of the European Union to Georgia, 08/10/2010.

Interviewee no. 62, Sedlex, Chisinau, 20/06/2010.

Interviewee no. 63, Second Secretary, Ukraine's mission for the EU, Brussels, 22/06/2011.

Interviewee no. 64, Deputy Head of Economic Section, Party of Region, Kiev, 02/04/2009, (group interview).

Interviewee no. 65, Programme Director, ICPS Ukraine, Political Analysis and Security Programs, Kiev, 14/12/2009.

Interviewee no. 66, GEPLAC, Officer, Tbilisi, 06/10/2011.

Interviewee no. 67, Programme Director, Renaissance Foundation, Kiev, 16/12/2010.

Interviewee no. 68, Sector Manager Migration and Asylum, Delegation of the European Union to Ukraine, 15/12/2011.

Interviewee no. 69, Director, Institute for Euro-Atlantic Cooperation, Kiev, 08/12/2009.

Interviewee no. 70, DG Home Affairs, Unit B.2 - Asylum, Brussels, 21/06/2011.

Interviewee no. 71, Programme Director, Eurasia Partnership, Tbilisi, 29/09/2010.

Interviewee no. 72, Officer -Trafficking, IOM, Chisinau, 19/06/2010.

Interviewee no. 73, Twinning Project, Kiev, Ukraine, 09/12/1009.

Figures

Figure 1. Democracy

Freedom House/Nations in Transit Dataset : 1(+) to 7(-)	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	Average
Georgia	4.33	4.58	4.83	4.83	4.96	4.86	4.68	4.79	4.93	4.93	4.86	4.78
Moldova	4.29	4.50	4.71	4.88	5.07	4.96	4.96	5.00	5.07	5.14	4.96	4.87
Ukraine	4.71	4.92	4.71	4.88	4.50	4.21	4.25	4.25	4.39	4.39	4.61	4.53
Average New Eastern Member States	2.01 (CZ,HU, LA, LI, PL, SK, SL) in 2004 3.09 (RO, BL) in 2007											2.55
Average Balkan states accepted as Candidates	3.79 (CR 2003, MN 2008, SE 2009) 4.29 (MC 2004)											3.09

Source: Nations in Transit data²⁵⁹ (author's constellation)

²⁵⁹ Available at: <http://www.freedomhouse.org/report-types/nations-transit>

Figure 2. Rule of Law: Corruption and Independence of Judiciary

Corruption Perception Index: 10(+) to 0 (-)	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	Average
Georgia	Not available	2.4	1.8	2.0	2.5	2.8	3.4	3.9	4.1	3.8	3.0
Moldova	3.1	2.1	2.4	2.3	2.9	3.2	2.8	2.9	3.3	2.9	2.8
Ukraine	2.1	2.4	2.3	2.2	2.6	2.8	2.7	2.5	2.2	2.4	2.4
New EU Member states											4.7 (2004) 3.9 (2007)
Eastern Candidate States	CR 3.7 (2003), MC 2.7 (2004), MN 3.4 (2008), SR 4.1 (2009)										3.5

Source: Corruption Perception Index²⁶⁰ (author's constellation)

CIRI Dataset independence of judiciary: 2(+) to 0(-)	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Average
Georgia	1	1	1	1	1	0	1	0	0	0	0.6
Moldova	1	1	1	1	1	1	0	1	0	0	0.7
Ukraine	1	1	1	1	1	0	0	0	0	0	0.5
Average- New Member states											1.75
Average - Balkans											1.33

Source: CIRI Dataset²⁶¹ (author's constellation)

Figure 3. Human Rights

physical integrity rights SCALE: 0 worst 8 Best	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Average
Georgia-	5	4	5	4	4	6	4	4	5	6	4.7
Moldova-	5	6	6	5	5	5	5	6	5	4	5.2
Ukraine	4	6	6	3	4	5	6	4	4	5	4.7
New Eastern member states											6.4 (2004) 5.5 (2007)
Candidate states in the Balkans											6.7
New Empowerment Rights Index	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Average

²⁶⁰ Available at: <http://www.transparency.org/research/cpi/overview>

²⁶¹ Available at: <http://ciri.binghamton.edu/>.

(no government) to 14 (full government respect).												
Georgia	9	9	8	8	7	6	8	7	10	8	8	
Moldova	11	8	9	7	9	7	8	7	5	4	7.5	
Ukraine	7	7	6	6	6	8	8	7	7	8	7	
New Eastern member states											12.5 (2004) 9.5 (2007)	
Candidate states in the Balkans											11	

Source: CIRI Dataset²⁶² (author's constellation)

Figure 4. Economic Freedom

Economic freedom dataset: 100 (+) to 0 (-)	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	Average
Georgia	54	58	56	58.	58	57	64	69	69	69	70	70	63
Moldova	59	54	57	60	57	57	58	58	57	54	53	55	57
Ukraine	47	48	48	5.	53	55	54	51	51	48	46	45	50
Av. New eastern member states	(2004) (2007)											66 62	
Av. Balkan countries*	(Macedonia 56.8 and Croatia 53.3 only available)											55	

Source: Economic Freedom Dataset, Heritage Foundation²⁶³ (author's constellation)

Figure 5. Party Opinion - Georgia

Georgia election 1992 : Minority representation of pro-European parties (5/12)		
Pro-European Party Name	Position in Parliament	Seats
National Democratic party	3th	14
The Traditionalists	6th	8
Greens	7th	11
National Independence	11 th	4
Social democratic party	14	2
Total		38/225
Georgia election 1995: Minority representation of pro-European parties (2/8)		
Pro-European Party name	Position in Parliament	Seats
National democrats	2nd	108
Traditionalists	5th	3
Total		111/235
Georgia election 1999: Majority representation of pro-European parties (2/4)		
Pro-European Party name	Position in Parliament	Seats
SMK Citizens' Union	1st	131
SSAK All-Georgian Revival Union	2nd	58
Total		189/235

²⁶² Available at: <http://ciri.binghamton.edu/>.

²⁶³ Available at: <http://www.heritage.org/index/default>.

Georgia election 2003: Majority representation of pro-European parties (4 out of 7)		
Pro-European Party name	Position in Parliament	Seats
Democratic Union of Revival	2nd	33
SLP Labour Party	4th	20
BD Burjadzaze Democrats	5th	15
BAS Bloc 'For a New Georgia'	1st	38
Total		106/ 150
Georgia election 2008: Majority representation of pro-European parties		
Pro-European Party name	Position in Parliament	Seats
National united movement (no MFG data but has clarified its goal for EU membership and NATO)	1st	119
New rights party had no mention in the EU integration in their programme (Timuş 2008)	2nd	
Despite this the first party gaining more than majority is supporting EU integration and therefore it is considered EU orientated		

Source: MSG dataset ²⁶⁴(for pro-European parties) and (for seats for the parties popularity ratings) (author's constellation)

Figure 6. Party Opinion - Moldova

Moldova election 1994: Minority representation of pro-European parties (1/4)		
Party name	Position in Parliament	Seats
All neutral at least		
Pro-European and pro-Russia		
BTI Peasants and Intellectual Bloc (higher Russian)	3rd	11
Pro-Russia		
PDAM Agrarian Democratic Party	1st	56
Anti-Russia		
PPCD Christian Democratic People's Party	4th	9
Total pro EU vs Pro Russian		11/104 vs 56/104
Moldova election 1998: Majority representation of pro-European parties (2/4)		
Party name	Position in Parliament	Seats
All Neutral at least		
Pro-European and pro-Russia (higher eu score)		
CDM Democratic Convention	2 nd	26
PMDP Democratic Prosperous Moldova	3 rd	24
Pro-European and Pro and anti-Russia/CIS		
PFD Democratic Forces	4 th	11
Pro-Russia/CIS	1 st	40
PCM Communists		
Total pro-European and pro-Russian		30 vs. 40
Moldova election 2001 : minority representation of pro-European parties		
Party name	Position in Parliament	Seats
Pro-European and pro-Russia (higher EU support score)		
BEAB Braghis Alliance	2 nd	19
Pro-European and Pro and anti-Russia/CIS		
PPCD Christian Democratic Peoples Party	3 rd	11
Pro-Russian		
PCM Communists	1 st	71
Total pro-European and pro-Russian		19/101 vs 71/101
Moldova election 2005: Majority representation of pro-European parties		
Party name	Position in Parliament	Seats
Pro-European and anti-Russian		
PPCD Christian Democratic Peoples Party	3 rd	11
Pro-European and Pro and anti-Russia/CIS (same scores)>pro-European		
DMB Democratic Moldova Bloc	2 nd	22
Pro-European and Pro-Russian		
PCM Communists (higher EU score)	1 st	56
Total pro-European		89/101

²⁶⁴ Available at: www.ipu.org/parline-e/reports/arc/2119_92.htm.

Moldova election 2009: Majority representation on Pro-European parties		
Party name	Position in Parliament	Seats
Pro-European and pro-Russia (higher EU support score)		
PLDM Liberal party	2nd	18
Pro-European and pro-Russia (same score)		
PCM Communists	1st	48
Pro-European and pro-Russia (higher Russia/CIS support score)		
Liberal party	3rd	15
PDM	4th	13
PAMN	5th	7

Source: MFG dataset ²⁶⁵(for pro-European parties) and (for seats for the parties popularity ratings) (*author's constellation*)

Figure 7. Party Opinion - Ukraine

Ukraine election 1994: Minority representation on Pro-European parties		
Party name	Popularity Position	Seats
Pro-EU and Anti Russia		
Rukh Popular Movement	2nd	20
Neutral EU and anti-Russia		
UKRP Conservative Republican Party	11th	2
Pro-EU and pro and anti-Russia (anti higher score)		
UNA National Assembly	13th	1
Pro EU and Pro and anti-Russia (same score)		
KhDPU Christian-Democratic Party	14th	1
Pro-EU and Pro-Russian same score		
DemPU Democratic Party	9th	2
URP Republican Party	5th	8
Pro EU and Pro Russian (lower EU score)		
RC Renaissance of Crimea		
Kuchma Bloc for Reforms		
Neutral both direction		
SDPU Social Democracy Party	10th	2
PVDU Party of the Democratic Rebirth	7 th	4
SelPU Peasant Party	3rd	19
Only Russia positive (EU neutral)		
KPU Communist Party	1st	86
SPU Socialist Party	4 th	14
PPU Labour Party	8 th	4
HKU Civic Congress	12th	2
KUN Congress of Nationalists	6th	5
Ukraine election 1998 : Majority representation of pro-European parties		
Party Name	Popularity Position	Seats
Pro EU and Neutral Russia		
Vpered Go Ahead, Ukraine	15th	1
Pro EU and pro and anti Russia (lower both and same)		
KhDPU Christian-Democratic Party	14th	2
Pro eu and neutral Russia		
Rukh Popular Movement	2nd	46
PZU Green Party	4th	19
Pro EU and Russia (same score)		
NDPU People's Democratic Party		

²⁶⁵ Available at: http://www.ipu.org/parline-e/reports/arc/2119_92.htm.

Neutral EU and Russia		
KPU Communist Party	1st	121
SDPU-o Social Democratic Party-associated	8th	14
NF National Front	12th	6
APU Agrarian Party		
Neutral EU and Pro Russia/CIS		
PSPU Progressive Socialist Party	7th	16
BSP-SP Socialist Party-Peasant Party	3rd	34
Ukraine election 2002 :Minority representation on Pro-European parties		
Party name	Popularity Position	Seats
Neutral EU and Russia/CIS		
SPU Socialist Party	6th	22
NU Victor Yushenko Bloc Our Ukraine	2nd	119
JT Juliya Tymoshenko Election Bloc	5th	23
Neutral EU and positive Russia/CIS		
KPU Communist Party	3rd	64
SDPU- Social Democratic Party-associated	4th	31
ZyU For United Ukraine	1st	175
Ukraine election 2006: Majority representation on Pro-European parties		
Party name	Popularity Position	Seats
Pro EU and Neutral Russia/CIS		
Our Ukraine	3rd	81
SPU Socialist Party	4 th	33
Neutral EU and Russia/CIS		
Juliya Tymoshenko Election Bloc (BYUT)	2nd	129
Pro EU and Russia/CIS		
Party of Regions (higher eastern score)	1st	186
Pro Russia/CIS and neutral EU		
KPU Communist Party		21
Ukrainian election 2007 : Majority representation on Pro-European parties		
Pro EU and Neutral Russia/CIS		
Juliya Tymoshenko Election Bloc (BYUT)	2nd	156
Our Ukraine	3rd	72
Same scored support for both or Neutral EU and CIS/Russia		
PRU Party of Regions	1st	175
SPU Socialist Party		
LB Lytvyn Bloc	4th	20
Pro Russia/CIS		
KPU Communist Party	5th	27

Source: MFG dataset ²⁶⁶(for pro-European parties) and (for seats for the parties popularity ratings) (authors constellation)

Figure 8. Perceptions on European Values and Nationalist Tendencies

	Amount of parties being pro democracy, freedom and human rights, fight against corruption and supporting market enterprise	In comparison to the three countries	Nationalist Tendencies
Georgia			
1992	3/18	At best mixed in 1999 Position 2.	5/18
1995	2/8		0/8
1999	2/4		2/4
2004	3/7		1/7
Moldova			
1994	3/4	Majority 1994, 1999, 2009 Position 1.	0
1999	3/4		1/4
2001	1/3		0
2005	1/3		0
2009	3/5		0
Ukraine			
1994	3/16	Minority all the time Position 3.	6/16
1998	5/12		4/12
2002	1/6		3/6
2006	1/5		2/5
2007	1/6		2/6

Source: MFG Database ²⁶⁷t (author's constellation)

²⁶⁶ Available at: http://www.ipu.org/parline-e/reports/arc/2119_92.htm

Figure 9. Identification with the EU Data: Population Poll Results

Amounts in the table represent percentages; cells were left empty in case data was not available in the three population poll sources which were utilised for this research.

IDEN TI- FICA TION		19 92	19 93 *	19 94 *	19 95 *	19 96 *	19 97 *	20 02	20 03 #	20 04 #	20 05 #	20 06 #	2007 #	2008#	2009#	2010#	2011 #
Georgia – Public Opinion																	
Where does future lie? Partne r/threa t?	EU	21		13	15				13/ 1	23/ 1	21/ 1	28/ 1	20/0	40/2	29/3	22/ 0.1	20/ 1
	US	26		13	14				59/ 15	63/ 8	66/ 9	53/ 12	48/1 2	63/3	60/3	56 4	58/ 3
	RU	14		27	34				42/ 60	32/ 77	27/ 78	32/ 74	20/7 0	6/90	10/8	18/ 83	10/ 83
Image of the EU	Posi tive	39		25	16	37			71 268	83	86	83	85	94	85	86	91
	Neu tral	33		35	8	21			4	2	1	6	4	1	5	6	3
	Neg ativ e	24		13	5	10			10	6	4	2	2	2	3	1	1
Who benefit s most	Cou ntry itsel f			23	26												
	Bot h			33	30												
	EU			16	10												
Suppot for EU memb ership	Yes	82						70	72	74				72	79	73**	
Moldova – Public Opinion																	
Where does future lie?	EU	23															
	US	30															
	RU	15															
Image of the EU ²⁶⁹	Posi tive	48											48	61		67	69
	Neu tral	23											18	17		16	11
	Neg ativ e	3											13	10		8	14
Suppo rt /Vote ²⁷⁰ for memb ership	Yes	85						++ 61		66		70					64
Ukraine – Public Opinion																	
Where does future lie?	EU	12	24	12	14			29 +	27	26	27	30	33	28			
	US	14	9	13	10			4	2.9	2.2	2.0	1.5	1.0	0.6			
	RU	30	46	48	54			32	29	40	43	46	44	51			
Image of the EU	Posi tive	46	44	30	23	21											
	Neu tral	27	27	25	14	14											
	Neg ativ e	2	2	2	3	3											

²⁶⁷ Available at: http://www.ipu.org/parline-e/reports/arc/2119_92.htm.

²⁶⁸ *source IRI: www.iri.org (how do you rate the relations ship with the EU).

²⁶⁹ *source IRI: www.iri.org (how do you rate the relations ship with the EU).

²⁷⁰ ++Source : IPP Public Barometer. Available at: <http://ipp.md/libview.php?l=en&id=565&idc=156>

Who benefits most	Country itself			19	16											
	Both			4	32											
	EU			8	14											
Support for EU membership / need to join the EU? ²⁷¹	Yes	82					65	53	45	40	49	54	45	44	58	51
	No	3						13	26	29	36	32	30	35	25	30

* indicates to CEEB public data poll data results. Available: [http://www.gesis.org/?id=1359&tx_eurobarometer_pi1\[vol\]=1359&tx_eurobarometer_pi1\[pos1\]=0](http://www.gesis.org/?id=1359&tx_eurobarometer_pi1[vol]=1359&tx_eurobarometer_pi1[pos1]=0)

refers to IRI population poll results. Available at: <http://www.iri.org/explore-our-resources/public-opinion-research/public-opinion-polls>

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++ refers to IPP Public Barometer. Available at: <http://ipp.md/libview.php?l=en&id=565&idc=156>

Figure 10. Financial Assistance

Amount (referring to millions of Euros)	Georgia	Moldova	Ukraine
Border Management	37	37	160
Readmission Agreement	20	4.4	35
Protection of Asylum and Refugees	7.3	8.2	4.5
Fight against Trafficking of Human Beings	5	3.4	4

Source: Author has collected and calculated these average values on the basis of the EU's project fiches and National indicative plans available in the EuropeAid Website. The amounts are averages as some of the assistance allocated to certain fields were part of a multicounty projects and in those cases amounts were equally divided between the countries, if no information was available in detail.

²⁷¹ Answers to a question by Razumkov population poll 'Does Ukraine need to join the EU?'

Figure 11. Summary of Results

	EU Membership Prospect	Identification with the EU	Issue-Specific Incentives	Financial Assistance	Technical Cooperation	Legitimacy	Political Costs	Economic Costs	Cross-conditionality and socialisation	Formal Compliance	Behavioural Compliance
Georgia											
Border Guard Reform	-	+	+/-	+	+/-	-	+	-	+ NATO	+ 2006	+/- 2006, 2007
Readmission	-	+	+	+	+/-	-	+	+/-	+ Russia visa facilitation	+ 2010	+ 2010, 2011
Asylum	-	+	+/-	+/-	-	+	+/-	+	+ IOs	+/- 2007, 2009	+/- 2009, 2010
Human Trafficking	-	+	-	+/-	-	+	+	+	+ IOs	+ 2006	+ 2007
Moldova											
Border Guard Reform	+/- +	+/-	- +/-	+	+	-	+/-	+/-	-	+ 2007, 1011	+/- 2007
Readmission	+/-	+/-	+	+	-	-	+	-	+ Russia visa facilitation	+ 2007	+ 2009
Asylum	+/-	+/-	- +/-	- +/-	+/-	+	+	+/-	+ IOs	+/- 2004-2008	+/- 2007-2010
Human Trafficking	+/- +	+/-	- + (2011)	-	- +/- (2011)	+	+	-	+ IOs	+ 2005-2006 + 2011	+/-
Ukraine											
Border Guard Reform	+	+/- +	- +/-	+	+	-	+	-	-	+ 2003	+/- 2007
Readmission	+/-	+/-	+	+	+/-	-	+/-	-	-	+ 2008	+/-
Asylum	+/-	+/-	-	- +/- (2011)	+/-	+	-	-	+ IOs	+/- 2001, 2011	-
Human Trafficking	+/-	+/-	-	-	-	+	+	-	+ IOs	+ 2006	-

Table presents values of the variables when compliance took place in regard to the four sectors. Coding: += high level/high compliance, +/- = medium level/partial compliance, -= low level/low compliance.

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