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## **The Limits of EU External Governance: Implementing EU External Migration Policy**

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### **Abstract**

The European Union attempts to extend its policies, rules and practices into non-member states have been conceptualised as ‘external governance’ and have become particularly visible in its projects and programmes towards neighbouring countries. The paper shows the theoretical limits of the external governance approach for an assessment of their implementation and argues for adopting an organisational perspective to overcome these limitations. It highlights the relevance of macro-political, distributional and organisational factors for implementation of external policies in order to evaluate the empirical limits of external governance. External migration policy is used as a test case to assess implementation dynamics in a European Union priority policy area towards Ukraine and Morocco. Rather than a story of policy transfer, this paper indicates that distributional and particularly organisational factors almost inevitably draw out the limits of EU external governance in non-accession countries when engaging in concrete policy projects in non-member states.

## **Keywords**

European Union; external governance; implementation; migration policy; organisational sociology

## **Introduction**

External influence of European Union (EU) policies has received increasing attention in recent years and has added to discussions about actorness and role conceptualisations of the EU in its international relations (e.g. Bretherton and Vogler 1999; Manners 2002). The external governance literature has emerged to capture the extension of EU rules and practices beyond its legal borders in different policy areas, i.e. below the level of membership and outside the legal scope of the *acquis communautaire* (Friis and Murphy 1999; Gänzle 2009; Lavenex 2008; Lavenex and Schimmelfennig 2009). Implementation in non-member states (NMS) or ‘rule application’ is identified as the ‘deepest impact of external governance’ (Lavenex and Schimmelfennig 2009: 801). However, implementation studies indicate that EU influence is severely limited due to complex inter-organisational dynamics between diverse actors during implementation (Bicchi 2010; Wunderlich 2010). These findings do not sit squarely with models of EU external governance that neatly contrast EU and domestic institutional as well as macro-level factors and fall short of conceptualising environmental pressures on implementing organisations. What shapes implementation processes of EU external governance in NMS? How far can the EU exert influence on these processes? In other words, what are the theoretical and empirical limits of EU external governance?

Inter-organisational cooperation around migration makes a relevant case to assess the deepest impact of external governance because it is EU induced cooperation in ‘one of the strategic priorities in the external relations of the Union’ (European Commission 2006: 3) and viewed critically in NMS as touching on their state sovereignty. In accession countries, a central driver for rule selection and adoption has been conditionality and especially EU membership as the ultimate reward (Schimmelfennig and Sedelmeier 2004; Kruse 2007). However, implementation is an intricate process that follows a distinct logic from decision-making at governmental level (Brunsson 1989). Building on this insight, it is not only empirically interesting but also methodologically useful to study countries without membership perspective. This helps to disentangle the influence of different factors on complex implementation dynamics and evaluate the link between implementation and intergovernmental decision-making. Morocco and Ukraine are countries where both EU external governance of migration is a priority and membership is ruled out or distant. Their selection follows therefore a most-similar case study design but also offers variation of internal political structures and migration flows along the Southern and Eastern EU outer border.

The external governance approach is useful to conceptualise developing cooperation structures and dynamics at the sector level, for example under the umbrella of the ‘European neighbourhood policy’ (ENP) as a composite of sectoral policies (Sedelmeier 2002). Nevertheless its dichotomous understanding of EU-NMS relations, its structuralist approach and a ‘level-of-analysis problem’ (Singer 1961) limit its use for our understanding of implementation processes and are elaborated in the first following section of this article. The second section draws on the

implementation literature, sociological neo-institutionalism and organisational sociology and proposes an organisational perspective to overcome the limitations of the external governance approach. An organisational perspective on implementation suggests that EU external governance encounters its empirical limits in macro-political, distributional and organisational factors.<sup>1</sup> The empirical sections of this article evaluate the influence of each of these factors on implementation of EU external migration policy. For reasons of comparability, focus is set on migration control and asylum that make the bulk of EU external measures. Empirical findings from Morocco and Ukraine show that perceptions of international migration pressures and practical challenges to inter-organisational cooperation have decisive impact on implementation of EU policy objectives and are largely beyond the reach of EU external governance.

### **External governance and implementation**

The aim of the external governance approach is ‘to capture the expanding scope of EU rules beyond EU borders’ (Lavenex and Schimmelfennig 2009: 791). The approach has so far looked at the competing influence of three sets of factors on policy selection, adoption and implementation: (a) EU institutional factors, (b) domestic factors in NMS and (c) ‘power-based’ explanations of interdependence and the influence of external ‘governance providers’. Taking the aim of the approach literally, the term ‘scope’ of EU rules has until now only been narrowly interpreted as ‘range of application’ following from an interest in compliance and policy transfer in accession and ENP countries. By examining structures and modes of external governance in different policy areas and conditions that influence the application of

EU rules and practices, present theorising implies dichotomous EU-NMS relations, overemphasises structural elements and mixes different levels of analysis. However, in a more figurative sense, ‘scope’ also means the ‘opportunity or liberty for or to do something’ and a more literal ‘space or range for freedom of movement or activity’ (Oxford English Dictionary 1989, XIV: 672). These wider interpretations draw greater attention to the complexities of implementation processes and to the EU’s scope of influence.

The external governance literature emphasises institutions and the cooperation environment in a rather structuralist way. Taking EU policy and structures as its analytical starting point, it implies that the more precise, binding and enforceable are EU rules the more likely that they will be selected, adopted and implemented (Lavenex 2008: 946f; Lavenex and Schimmelfennig 2009: 794f, 802f). Although the approach stresses that the EU does not fit the unitary state actor model (Lavenex and Schimmelfennig 2009: 792), it slides into a dichotomous understanding of EU versus NMS influence with the outcome being either adoption or violation of EU rules (Lavenex and Schimmelfennig 2009: 802). By drawing a clear distinction between rule selection, adoption and application and by viewing them in a sequential relation to each other (ibid), implementation is understood as a hierarchical, “top-down” process down an “implementation chain”, reducing local implementers to mere decision-takers. At the same time, it contributes to a Eurocentric perspective because the appropriateness of EU rules and the motivation for applying them in the socio-political and historical context in NMS are left unquestioned.

However, a dichotomous weighing of EU against domestic factors seems little helpful to comprehend implementation processes under condition of complex interdependence between governmental, non-governmental and international organisations from the EU and NMS. Migration is a human adaptation strategy that is highly reactive to state interventions, which not only produce intended but also unintended consequences, for example as externalities of EU integration (Lavenex and Uçarer 2002). Interests and ideas on migration are also diverse and conflicting within states and at EU level (Joppke 1998; Boswell 2008). Interest to cooperate and ideas how to do so can therefore be more similar among actors across state borders than between actors within the same country. Accounts of EU integration of migration policy, for example, show greater affinity between internal security actors in member states than with national courts, other ministries and migrants' rights organisations (Guiraudon 2000).

The implementation of EU legislation was observed to bring about adaptation 'with national colours' in member and accession states (Risse et al. 2001: 1). Outside the EU legal framework, external policy objectives can offer room for interpretation even in largely regulatory policy fields such as migration policy. For example, the EU objective of stricter border controls leaves open which means to use, which part of the border and which group of people to control. Furthermore, policy objectives are not set in stone and it might be more reasonable to assume that policy towards NMS is constantly renegotiated through feedback loops as suggested by bottom-up conceptualisations of implementation as a 'policy-action relationship' (Barrett and Fudge 1981). Implementation and Europeanization studies show that policies are at times deliberately vague because leeway of interpretation can reduce conflict and

opposition and helps translating policies into national contexts (Mörth 2003; Matland 1995: 158). A more fluid conceptualisation of implementation processes and space for agential factors seems necessary in the external governance approach.

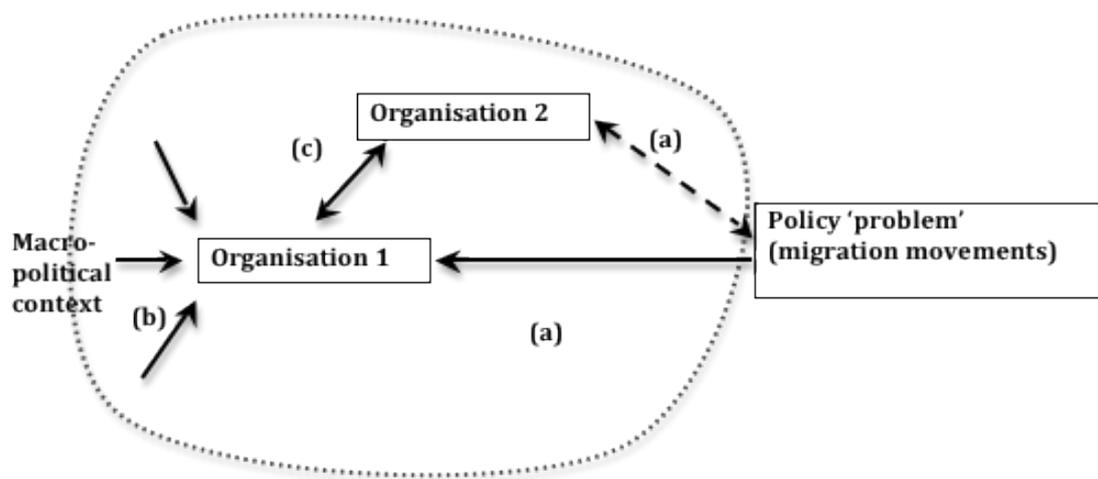
The external governance approach as suggested by Lavenex and Schimmelfennig (2009) poses a ‘level-of-analysis problem’ (Singer 1961). By weighing EU institutional and domestic factors on the one side and ‘power-based’ explanations on the other (Lavenex and Schimmelfennig 2009), it mixes a meso- and a macro-level of analysis. Institutions and organisational structures at the sector level relate to the meso-level of analysis while intergovernmental relations and bargaining power based on resource distribution and interdependence between the EU, NMS and ‘competing governance providers’ such as Russia and the United States relate to a macro-level of analysis (Lavenex and Schimmelfennig 2009: 803). Although the macro-context is likely to be relevant to implementation of EU policy in NMS, it is problematic to assume that the macro-level can explain differentiated implementation structures, processes and output in different policy areas at the meso-level (ibid.: 792). The next section suggests that an organisational perspective helps to overcome the identified limitations of the external governance approach and to analyse implementation structures and processes.

### **Towards an organisational perspective**

Implementation is in the widest sense about organisational action in order to achieve preceding policy objectives (for an overview see Hill and Hupe 2002). Following organisational sociological insights, organisations are open systems that need to make sense of their environment in order to act purposefully on it (Daft and Weick 1984).

Taking these insights together, implementation depends on organisations making sense of their environment. Taking ‘Organisation 1’ as an example for an implementing organisation, it has to make sense of three major environmental factors: (a) the policy ‘problem’ that is at the centre of the policy intervention (b) the macro-political context of the implementing organisation and (c) the immediate organisational context with which the implementing organisation is interacting (Figure 1).

Figure 1: Main environmental factors relevant for implementation by organisation 1.



If an implementing organisation were purpose-driven, it would need information about the policy ‘problem’. Distributional factors relate to changing migration movements and other organisations’ intended or unintended influence on their trajectory for organisational action (termed (a) in Figure 1). Information is scarce but particularly needed to work on a policy ‘problem’ that is a complex, volatile and large scale social phenomenon such as international migration, that escapes causal and predictive theorising and appears to be an ‘insoluble’ issue with conflicting interests

and interdependencies with other policy areas (Boswell 2009: 170f; Peters 2005). Information gaps create uncertainties and hinder organisational action especially in a cross-border context (Wunderlich forthcoming). Furthermore, constructivist accounts stress that perceptions of ‘problems’ influence policy responses (Peters 2005: 353f). “Migrant groups” are targeted based on their “usefulness” (e.g. highly skilled vs. low skilled) or “legitimacy” to cross borders and stay (e.g. nationals, asylum seekers, illegal immigrants) or based on expectations about future migration movements. NMS organisations’ motivations to act might therefore be independent from but coincide with EU policy objectives.

The macro-political context of the organisation (termed (b) in Figure 1) refers to broader relations between the EU and NMS beyond the policy sector of migration such as overall trade relations, regional security issues, etc. and relates to external power relations and complex interdependence that are elsewhere conceptualised as ‘power-based explanations’ of external governance (Lavenex and Schimmelfennig 2009: 803f). A strong dependence on the EU at the macro-level would make compliance likely with EU objectives at the sector level, e.g. on migration. Strong EU incentives and credible threats increase the chance that NMS actors commit to implementing EU priorities as suggested in the ‘external incentives model’ (Schimmelfennig and Sedelmeier 2004: 663-667). In addition, bilateral relations between member and non-member states are relevant to cooperation on international migration as a cross-border phenomenon with interdependence between emigration, transit and immigration countries. However, in contrast to power-based explanations, an organisational perspective overcomes the levels of analysis problem because macro-political factors do not *per se* influence implementation but only if the

implementing organisation considers them relevant or if they lead to political orders that direct its actions.

Organisational factors (termed (c) in Figure 1) refer to issues emerging from the political structures of the EU and the NMS and relations with other organisations in the policy field that shape the role and understanding of the implementing organisation. The role of administrative capacity for implementation is well established in the literature (Treib 2008: 11; Lavenex 2008: 946f). Where implementation requires action by more than one organisation, certain conditions should be fulfilled to achieve meaningful action: cooperation partners need to be available and mutual understanding should exist of migration and each others' role in the cooperation. Organisations are not simply functionally driven but actively seek to justify their actions, increase their legitimacy and expand their mandates and capacities (Barnett and Finnemore 1999; March and Olsen 1998; Meyer and Rowan 1977; Daft and Weick 1984). Conflict, competition and "turf wars" can emerge between implementing organisations. Similar tendencies could be injected from the political system if implementing actors align with or are instrumentalised along systemic fault lines. In contrast to distributional or macro-political factors, organisational factors appear to be more immediate to the organisation and therefore possibly more relevant to implementation processes at large.

It is noteworthy that an organisational perspective does not follow the distinction between domestic and EU institutional factors of the external governance literature. Although bottom-up accounts run in danger of overemphasising implementers' leeway (Matland 1995: 150), in return, the influence of an organisation's affiliation

on implementation processes should not be overdetermined. Without ignoring hierarchical administrative decisions, implementers should have leeway to interpret their environment and alter, adapt or frustrate implementation.

The methodological challenge of how to distil organisations' perspectives can be met by means of triangulated accounts in order to fruitfully analyse implementation processes. As in the following empirical analysis, these are based on qualitative data from document analysis and 29 semi-structured elite interviews. Interviews were conducted with insiders in relevant implementing governmental, international and non-governmental who are involved in planning, implementing or evaluating EU projects at EU level, in Morocco and Ukraine that were coded for systematic analysis.

### **Implementing EU external migration policy**

EU external migration policy has developed since 1999 and is updated in five-year programmes last in Stockholm (Council of the EU 2009). It has been implemented since 2001 with a budget of at least €1billion until 2010 in bilateral cooperation with NMS and international organisations based on geographic instruments such as the European Neighbourhood Partnership Instrument (ENPI) (formerly TACIS and MEDA) and more short-term, targeted interventions under the 'Thematic Programme for the Cooperation with Third Countries in the Areas of Migration and Asylum' (formerly B7-667 and AENEAS). Morocco and Ukraine have each received at least €130million for implementation of migration policy projects until 2008 as the latest available figures. External migration policy has emphasised migration control measures despite attempts to stress preventive elements in the EU's 'global approach

to migration' (Council of the European Union 2005; Boswell 2003; Lavenex and Kunz 2008). For reasons of comparability only the main elements of this approach are analysed (border management, readmission agreements, building asylum systems), leaving aside limited initiatives on labour migration and the link between migration and development in Morocco. The next parts assess the empirical limits of EU external governance by analysing the influence of distributional, macro-political and organisational factors on implementation of EU migration policy projects in Morocco and Ukraine.

### **Macro-political factors**

Morocco's and Ukraine's macro-political relations are imbalanced in favour of the EU. However, the following analysis shows that macro-political factors do not explain implementation dynamics and that the EU cannot dictate implementation in either case.

- The Western Sahara conflict cut Morocco off from sub-Saharan Africa since the 1970s and it stays disconnected from the rest of the Maghreb due to the 1994 border closure with Algeria (Vermeren 2006: 36f, 92f). It is not a member of the African Union and its memberships of the Arab League and the paralyzed Arab Maghreb Union do not strengthen its international stance. This geopolitical environment means that Morocco's most important partner is the EU and its member states, which are also Morocco's main trade partners.
- Despite political support for European integration since the early 1990s and hopes that the 2004/2005 Orange Revolution would overcome

misunderstandings, frustration and fatigue in Euro-Ukrainian relations (Wolczuk 2006), EU accession is but a far prospect for Ukraine. This situation has not improved since President Yanukovich, who was ousted by the Orange Revolution, regained power in 2010 and has strengthened authoritarian rule (Economist 2011). Ukraine has close socio-political, historical and economic relations with Russia with recurring tensions around gas import, Ukraine's future NATO membership and territorial disputes.

'Power-based explanations' would therefore indicate that Morocco's one-sided dependence should make it more receptive to EU external governance than Ukraine with its (at least rhetorical) EU membership aspirations and fluctuating relations with Russia. This could place Ukraine in a favourable bargaining position vis-à-vis EU pressure to cooperate on migration.

Although some argue that macro-political relations allow the EU to dictate Morocco's migration policy (Elmadmad 2007; Charles 2007), the influence on practical cooperation is in fact limited. Although EU conditionality is presented as a powerful means to achieve policy objectives in NMS (Trauner and Kruse 2008; Schimmelfennig and Sedelmeier 2004), others describe EU incentives in the European 'neighbourhood' as insufficient (Whitman and Wolff 2010: 13). The most salient example is the EU continuing struggle to sign a readmission agreement with Morocco. Despite substantial carrots such as the 2008 Advanced Status Agreement, with which the EU hoped to "buy" Morocco's signature for a readmission agreement, and threats 'to adopt measures or positions under the Common Foreign and Security Policy and other European Union policies [in the case of an] unjustified lack of cooperation' (Council of the European Union 2002: 10f), Morocco has effectively

hampered negotiations since 2000 (EU8; MA1)<sup>2</sup>. The EU's weakness to successfully threaten or incentivise NMS actors' behaviour as well as Morocco's ability to effectively oppose EU pressure can be better explained by organisational and distributional than by macro-political dependence as shown below.

The post-Orange Revolution elite signed the readmission agreement as a sign of commitment to cooperation with the EU after the Russian rapprochement in the last years of the Kuchma Presidency (EU1; EU10). Although the linked agreement on visa-facilitation can be read as an incentive for cooperation, it benefits but a select elite and most Ukrainians are facing worse requirements than before the 2007 Schengen enlargement. Only long-term visa liberalisation would offer a credible incentive but EU requirements such as good rule of law and a reassessment of the irregular migrant situation make it a difficult goal to attain for Ukraine (Jaroszewicz 2011). The 2007 readmission agreement and border management cooperation have brought Ukraine closer to EU policy and the Commission offered financial and technical assistance to address the difficulties of implementing the two (EU1; EU10). However, many implementation dynamics such as failing compliance, limited capacities and inter-organisational conflict between state actors cannot be explained by these macro-political factors but need to be attributed largely to organisational factors.

Morocco and Spain have a fluctuating record of close relations based on historical events, incumbent government positions, etc. that impact on bilateral cooperation on migration. However, macro-political factors need to be seen in conjunction with distributional factors on migration. The Moroccan-Spanish cooperation on border

controls and readmission is not primarily an outcome of EU external policy objectives but motivated by bilateral concerns about unregulated immigration (see next section). Subsequent cooperation of Morocco with the EU needs to be seen in this light and allowed for Moroccan concerns to enter the EU agenda. The Moroccan-Spanish example indicates that privileged interlocutor member states can exacerbate the potential for frustration or success of EU cooperation (Wunderlich 2010: 262f). In contrast, Ukraine does not have a privileged interlocutor EU member state. Neighbours such as Poland saw themselves more obliged to comply with EU standards during its accession process to the Union and the Schengen area than in a position to make concessions to Ukraine despite the impact on regional transborder economies and considerable protest by its neighbours (Grabbe 2002: 100; EU7).

### **Distributional factors**

Migration flows from and via Morocco and Ukraine over the 1990s and 2000s show that both are important countries of transit and origin with large emigration potential, sizeable diasporas and porous borders, situated along major migration routes to Europe (De Haas 2007; Uehling 2004). Externalities of EU integration affect both countries (Lavenex and Uçarer 2002), for example, where changing migration movements are the result of the boundary build-up around the Schengen area of internal free movement. Although Ukrainian and Moroccan emigration bring them remittances and relief from high unemployment, they have agreed to EU cooperation on illegal migration largely because of their reluctance to become countries of immigration.

In Morocco political actors have become increasingly sympathetic with EU aims to curb illegal migration even though they opposed EU cooperation since 1998. Spain enhanced unilaterally its border surveillance against illegal immigrants via the maritime ‘SIVE’ system and border fortification at the Spanish enclaves in Morocco, Ceuta and Melilla, in the early 2000s. These measures have not effectively stopped immigration to the EU but shifted migration flows and at best achieved deterrence (Elmadmad 2007: 25-30; Carling 2007: 336f). While Spanish-Moroccan relations worsened over illegal immigration and territorial disputes, Moroccan civil society and the media brought the issue of drowned citizens from sunken *pateras* to public attention. The King’s 2003 speech initiated Morocco’s first engagement with illegal migration as a reconciliatory steps towards Spain and response to internal public indignation: Law 02/03 was passed as a ‘sanction-based law’ against illegal and irregular migration (Elmadmad 2007: 35); cooperation started with Spain on border controls and readmission of Moroccan illegal migrants since 2004 (EU9; PE3; NGO3).

While Spanish-Moroccan cooperation on the ground progressed, the dramatic events at Ceuta and Melilla in 2005 triggered Morocco’s substantial engagement with the EU agenda to enhance border controls. When sub-Saharan migrants tried to enter the enclaves from Moroccan territory in around eleven thousand concerted attempts within a few weeks, Spain and Morocco jointly suppressed these attempts. The events manifested concerns about uncontrolled sub-Saharan immigration in the Moroccan Interior Ministry, which controls the state’s security apparatus (MA2; MA3; IO1). This had profound effects especially on asylum, which the Ministry views as an illegitimate way of economic immigration. In consequence, the Moroccan asylum

service was dismantled and cooperation stopped with the United Nations High Commissioner for Refugees (UNHCR) between 2004 and 2007 (MA1; IO6). Since then, the (non-)policy towards sub-Saharan migrants is one of toleration rather than engagement. A senior migration policy official summed up: 'If irregular migrants do not cause any problems then we do not have a problem. If they cause problems then we need to act' (MA1). The unclear status of most sub-Saharan migrants allows the Moroccan state to expel them from its territory *a gusto*. Open hostility was expressed by an Eastern Moroccan prefect who commented rather bluntly about the effects of tightened EU border controls that Morocco was not willing to become 'the rubbish bin of Europe' (cit. in Le Figaro 2005). The fear of migrants stranding in Morocco persists although the number of irregular migrants was estimated at between 10,000 and 20,000 in 2008, i.e. around 0.05 percent of its national population (IO1; MA1; NGO3; EU8). It explains Morocco's opposition against a EU readmission agreement that would oblige it to accept illegal immigrants to the EU independently of their nationality if they transited through Moroccan territory (EU8; EU9). But even where a bilateral readmission agreement exists as with Spain, Moroccan authorities have effectively hampered its implementation by contesting the admission of sub-Saharan migrants on grounds of lacking proof of transit via Morocco (Carling 2007: 323).

Although Ukrainian governments were generally disposed to cooperate with the EU on migration, as in the Moroccan case, it is largely distributional factors that shape organisations' reactions to EU cooperation. The prevalent view among Ukrainian security actors is that their country is threatened by irregular immigration, which strongly motivates their engagement with and implementation of the EU agenda (UA1; IO2). Ukraine's largely undemarcated northern and eastern borders in the

context of boundary build-up at its western borders during the Schengen accession of Poland, Hungary and Slovakia in 2007 have raised fears in the Interior Ministry and State Border Guard Service (SBGS) that Ukraine is becoming an open receptacle for immigration and transit migration (EU10; PE2).

The number of apprehensions of irregular migrants rose in Ukraine from 23,160 in 2003 to 47,906 in 2007 as the latest available numbers (Söderköping Process Statistics). The difference between estimates of the total number of irregular immigrants is almost comical ranging from 160,000 to 6 million (Uehling 2004: 81f; European Commission 2007: 28; UA2). Although IOM considers these numbers as exaggerated, Ukrainian concerns have run high about readmissions of third country nationals based on the agreement with the EU that entered into force in 2010. The perception of being under siege by irregular migrants provides toe-hold for cooperation of Ukrainian security services and technical assistance with external actors (UA1; PE1; IO2). Far from being reactive, the Ukrainian government is setting up its own network of readmission agreements as a practice adopted from the EU and its member states. Although forms of proof are specified in the EU readmission agreement, Ukraine could adopt Morocco's stands and successfully contest its implementation for third country nationals. Where refugees or asylum seekers are readmitted, present practice and a securitised perspective on make chain-*refoulement* a likely outcome because the Ukrainian asylum process is dysfunctional and inadequate and the EU-Ukrainian readmission agreement does not contain adequate safeguards. Expulsions of foreign citizens by Ukraine went mostly to countries with questionable human rights records and weak or non-existent asylum systems and *refoulement* to former Soviet countries has been reported due to continuing close

cooperation of their secret services (IO4; NGO1). The relevance of distributional over macro-political factors can be seen because SBGS security mentality does not extend to Ukrainian migrants, which is at odds with the EU's fight against illegal migration. A high-ranking ex-SBGS official stated, 'From the viewpoint of the SBGS, they are not illegal immigrants but legal emigrants – they are just citizens crossing the border' (PE2).

Ukrainian and Moroccan actors respond to concerns about changing migration flows and display discriminatory and xenophobic practices against recent immigrants and asylum-seekers. In consequence, distributional factors account for why they support EU cooperation on repressive policy measures, undermining international conventions that the EU seemingly wants to propagate.

### **Organisational factors**

As shown above, macro-political and particularly distributional factors matter for implementation of EU external migration policy, however, it is organisational factors that make them relevant to 'the deepest impact of external governance'. Particularly important are general features of the political system; the direct administrative environment and cooperation partners; and capacities of implementing organisations. While centralisation in the political system such as in Morocco allows central actors to frustrate or drive implementation, fragmentation and competition in the political systems such as in Ukraine can turn implementation into a chaotic dance but can also open surprising opportunities for cooperation with autonomous actors.

The King of Morocco holds most political power in the constitutional monarchy and nominates the so-called 'sovereign ministries' (interior, foreign affairs, defence and Islamic affairs). The Interior Ministry is the opaque centre of power and has not only dominated the country through administrative authority, clientelism and nepotism (Vermeren 2006: 80). It is also the central gatekeeper in the area of migration and in charge of border controls, the fights against human trafficking and illegal immigration. Other governmental actors such as the Ministry of Foreign Affairs, responsible for asylum and visas, the Ministry for Morroccans Living Abroad or the Ministry of Labour cannot act against it (Elmadmad 2007; PE3). After effectively blocking EU cooperation on border management between 1998 and 2005, the Interior Ministry agreed to cooperation largely due to distributional factors but not without a price. The Ministry achieved an increase of EU funding from €40million to €67million as well as implementation following its own priorities apparently without the Commission being able to monitor the use of the money (EU2; EU9). If EU support also aimed at the installation of an inter-organisational observatory with a broader and more integrated perspective on migration issues as indicated by Commission officials, then it was in vain because it has never come to life despite interest in other ministries (EU1; EU9; MA2). Considerable EU funding could therefore only have strengthened the position of the Interior Ministry and its securitised vision of migration in Morocco. Centralised features of hierarchy and dominance in the political system and migration policy field have allowed effective influence on EU policy projects and implementation.

In contrast, the political system and fragmented policy field in Ukraine have neither a hierarchical setup nor a dominant actor. While the presidential elements of the semi-

presidential system have gradually weakened since the Orange Revolution until 2010, tensions between Presidency and Government were common, undermined the division of power and policies were used to play out disagreement about the country's constitutional future (Tudoroiu 2007: 329-331). In the area of migration, this had particular impact on the installation of a central State Migration Service as foreseen by the 2005 EU-Ukrainian Action Plan to ensure intraagency cooperation. A three-year struggle between Cabinet and President broke out whether the body should be inter-ministerial or located in the Interior Ministry. In fact, the struggle reflected party-political tensions over the division of power between both constitutional actors that were only resolved when the "new old man" Yanukovich took over the Presidency and abolished the newly created State Migration Service in 2010 (UA1; UA2; PE1; Kyiv Post 2010).

Six different state actors are responsible for the area of migration with considerable autonomy from each other (EU10; IO2) with signs of unclear and overlapping competencies, regulatory contradiction and turf wars as also observed in other areas (Wolczuk 2006: 16). This has hampered effective coordination and triggered open arguments between them during EU-Ukrainian negotiations (EU3; EU10). Continuous organisational restructuring also brought the national asylum service to collapse in 2007 when the term 'migration' was not only erased from its name but also its mandate and eliminated the central decision-making body for asylum cases (UA2; IO4). Where implementation depends on coordinated action fragmentation is problematic as shown in two examples. Still deeply impregnated with a border security mentality, SBGS views asylum as an improper way to legalise irregular migration, has therefore been uncooperative with actors that hold a more complex

picture of migration and withheld access to the national asylum system (UA2; PE2; IO4; NGO2). Inter-ministerial disputes over property rights and financing temporarily halted the building of detention centres for implementation of the EU readmission agreement and of asylum reception centres (IO3; IO4). Coordination issues, competition and fragmentation therefore pose serious challenges to the aim of EU external governance to ensure a functioning asylum system and readiness to readmit migrants to Ukraine.

As for implementation at large, organisational capacities are also crucial for ‘the deepest impact of external governance’. Frequent changes at governmental level and increasing politicisation of public administration in Ukraine sweep a great number of especially high- and middle-ranking officials in and out of office. Relevant state officials seem to change almost every half a year, constantly reducing institutional memory, increasing staff training needs and affecting policy coherence. International organisations and NGOs struggle to cooperate in this environment (EU10; UA3; IO5; IO7; NGO1). High levels of corruption<sup>3</sup> have detrimental effects for EU external migration governance, for example, where corruption among border guards has facilitating effects on organised crime, illegal migration, weapons and drug trafficking (Uehling 2004: 83; PE1; PE2; NGO2). In areas such as asylum where continuous investment is necessary, UNHCR and the EU push Morocco and Ukraine “to pull their weight” and take up their responsibilities as signatories of the Geneva Convention and middle-income countries (IO4; IO6). Temporary EU projects with NGOs or UNHCR cannot substitute the reach and capacities of state actors to maintain facilities and provide direct services to migrants. Examples from Ukraine show difficulties of EU capacity-building projects in a climate of low pay,

competition for specialised staff and nepotism. Participation in external training provides career advancement opportunities that can frustrate EU objectives. For example, training on document security offers public officers a way into the banking sector where pay is four times higher (EU10) and high-ranking officials participate in training courses for prestige or promotion although they are not working at the operational level where such knowledge is useful (NGO1; NGO2).

However rather than confirming sweeping arguments that high levels of state capacity matter for successful implementation, an organisational perspective reveals that inter-organisational fragmentation can be beneficial to EU external governance where one actor drives implementation. With the strengthening of border guard services across its western borders in the run-up to the 2007 Schengen enlargement, SBGS became aware of its own inadequacies and set itself the ambitious plan to become ‘Schengen compatible until 2015’ (SBGS 2007; EU10; PE2). Although changing perceptions of migration flows have been influential, SBGS’ autonomy and longstanding leadership allowed it to adopt ownership of EU border management projects and receive material resources and training. This confirms that when an organisation faces profound crisis, it can overcome its dissatisfaction by ‘lesson-drawing’ and ‘isomorphism’ from actors that it sees as more successful (DiMaggio and Powell 1983: 151f; Schimmelfennig and Sedelmeier 2004: 668).

Organisational factors impact on external governance also at EU level. For example, lack of evaluation, internal coordination and shifting priorities inhibit EU follow-up projects (EU4; EU5). The importance of organisational factors explains why non-cooperation on migration does not lead to negative conditionality across policy fields

that is also observed elsewhere (Youngs 2009; Lavenex 2008). Different Commission DGs have their own agendas and priorities, which hampers EU internal coordination and cooperation with effect on EU external governance because individual DGs are interested in insulating their portfolio from interference by other DGs. Although DG External Relations (RELEX) does not ignore DG Home Affairs' external policy priorities, it views a contamination of overall 'good' bilateral relations on the base of non-cooperation on separate (albeit EU priority) issues often not as opportune (EU2; EU4; EU8). To confirm this, EU-Moroccan as well as EU-Ukrainian relations have just been upgraded by new framework agreements despite implementation problems regarding external migration governance. Where the Commission can effectively withhold or reclaim funding to implementing organisations, this does not strengthen external governance. Although it may prove an important threat especially to non-governmental or international organisations, it does not leave these organisations necessarily worse off since EU-funding is limited in time, not part of their standard budget and only continuous breaches would lead to permanent non-cooperation (EU4; EU5).

## **Conclusions**

The simple answer to the limits of external governance would be that implementation poses severe challenges to EU attempts to extend its rules and procedures into NMS. Tracing the theoretical and empirical limits of EU external governance towards NMS in the case of EU external migration policy illuminates this general statement. Studying implementation as the deepest impact of external governance has revealed limitations of present theorising. A dichotomous view on EU-NMS relations as well as a hierarchical understanding of implementation cannot account for the complex

inter-organisational cooperation between multiple actors during implementation in this area of complex interdependence. A look at the literature on implementation and organisational sociology draws closer attention to the “world of implementers” and suggests adopting an organisational perspective to overcome shortcomings of the external governance literature.

An organisational perspective reveals three sets of factors that challenge the implementation of EU policies in NMS: macro-political, distributional and organisational factors. Rather than theoretically predetermining how these challenges are going to affect implementing organisations, much depends on what implementing organisations make out of them. Notwithstanding the role of distributional and macro-political factors it is the organisational context that allows them to gain influence on implementing organisations and policy output. For example, what seems to matter more than the actual size of migration movements is how the organisation categorises international migration and reacts in different ways to emigrating nationals, transit migrants, asylum seekers, readmitted nationals or third country nationals. Similarly, macro-political factors do not *per se* drive implementation dynamics of EU external policy although they provide the environment to initiate and continue or oppose cooperation with the EU.

Organisational factors mark most clearly the empirical limits of external governance in Morocco and Ukraine and confirm the emphasis in the external governance literature on institutional dynamics over power-based arguments. The centralised Moroccan political system and migration policy area allow for targeted influence on EU interventions that the weak and disorganised framework in Ukraine does not

allow. Issues such as fragmentation, centralisation, coordination, domination, corruption or lack of capacities in the political system and the migration policy field are beyond the reach of EU external migration governance and possibly beyond EU influence in NMS at large. However, an organisational perspective reveals that no clear conclusions can be drawn on the base of strong or weak state capacity but emphasises the role of implementers' ownership over projects. Against the general belief, weak state capacity can not only frustrate but also open space for external governance whereas strong state capacity can inhibit implementation. Even though macro-political and distributional factors differ, the relevance of organisational factors in the case of Morocco and Ukraine indicates limitations of EU external governance also for other non-accession countries and in other policy areas where the EU aims at concrete action on a policy "problem" in a scenario of complex interdependence.

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## **Notes**

<sup>1</sup> ‘Organisation’ is defined as a collective goal oriented social arrangement based on a physical, legal entity. Using the European Commission as an example, its Directorate Generals can be seen as relevant entities and in consequence the Commission as a ‘multi-organisation’ with conflicting identities and interests (Cram 1994; Boswell 2008)

<sup>2</sup> Please find a table with codes and interview details below.

[TABLE 1 ABOUT HERE]

<sup>3</sup> Morocco scores 3.4 and Ukraine 2.4 on Transparency International’s Corruption Perception Index 2010 on a scale of 10 to 0 with 10 representing ‘highly clean’.

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Table 1: Interview codes

| Interview codes  | Interview partners  | Interview place and dates |
|--|---|---------------------------|
| European Union (all in Brussels if not stated otherwise) |   |                           |
| EU1  | Commission DG Freedom, Security and Justice (now Home Affairs)              | 4/12/2007                 |
| EU2-3  | Commission DG External Relations  | 7 and 17/12/2007          |
| EU4-5  | Commission DG EuropeAid   | 4 and 11/12/2007          |
| EU6  | Permanent Representation of Spain to the EU                                 | 10/12/2007                |
| EU7  | Permanent Representation of Poland to the EU                                | 11/12/2007                |
| EU 8-9   | Commission Delegation to Morocco  | Rabat, 21/11/2008         |
| EU10   | Commission Delegation to Ukraine  | Kyiv, 20/4/2008           |
| Morocco (all in Rabat)                                   |   |                           |
| MA1  | Ministry of Foreign Affairs   | 11/12/2008                |
| MA2  | Ministry of Employment and Social Affairs                                   | 8/12/2008                 |
| MA3  | National Employment Agency  | 27/11/2008                |
| Ukraine (all in Kyiv)                                    |   |                           |
| UA1  | Ministry of Interior  | 14/4/2008                 |
| UA2  | State Council on Nationalities and Religion                                 | 16/4/2008                 |
| UA3  | Ministry of Family, Youth and Sport   | 8/4/2008                  |
| International Organisations                              |   |                           |
| IO1  | International Organisation for Migration                                    | Rabat, 18/11/2008         |
| IO2-3  | International Organisation for Migration                                    | Kyiv, 3/4/2008            |
| IO4-5  | United Nations High Commissioner for Refugees                               | Kyiv, 3 and 17/4/2008     |
| IO6  | United Nations High Commissioner for Refugees                               | Rabat, 2/12/2008          |
| IO7  | Organisation for Security and Cooperation in Europe, representation Ukraine | Kyiv, 1/4/2008            |
| Non-governmental Organisations and Policy Experts        |   |                           |
| NGO1   | HIAS  | Kyiv, 4/4/2008            |
| NGO2   | Transparency International  | Kyiv, 28/3/2008           |
| NGO3   | Association Marocaine de Droit de l'Homme, Morocco                          | Rabat, 26/12/2008         |
| PE1-2  | Policy Experts  | Kyiv, 26 and 27/3/2008    |
| PE3  | Policy Expert   | Rabat, 1/12/2008          |

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