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## The limits of external governance: implementing EU external migration policy

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

Daniel Wunderlich

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## **Abstract**

The EU's attempts to extend its policies into non-member states have been conceptualised as 'external governance' and have become particularly visible in projects towards neighbouring countries. The article shows the theoretical limits of the external governance approach for assessing their implementation and argues for adopting an organisational perspective to overcome these limitations. It distinguishes macro-political, distributional and organisational factors and their influence on 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 of a EU priority towards Ukraine and Morocco. Rather than a story of policy transfer, this paper indicates that distributional and particularly organisational factors draw out the limits of EU external governance in non-accession countries when engaging in concrete external action.

## **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, i.e. below the level of membership and outside the legal scope of the *acqui 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). EU external migration policy has the unmistakable aim to reduce migration pressures into the EU, supported by a clear institutional framework. Following the literature, these features present beneficial conditions for EU external governance (Lavenex and Schimmelfennig 2009: 802). However, implementation studies indicate that EU influence abroad is severely limited, that NMS actors’ engagement with EU policy changes over time, and that EU actors downsize their ambitions due to EU internal sensitivities or to accommodate NMS interests (Bicchi 2010; Wunderlich 2010; 2011). These findings do not sit squarely with structuralist 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), the EU is dependent on NMS to implement its policies, and NMS view them critically 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 follows a distinct logic from governmental decision-making. It is therefore not only empirically interesting but also methodologically useful to study countries without membership perspective in order to disentangle different influences on complex implementation dynamics and to evaluate how implementation links with intergovernmental relations. Morocco and Ukraine are countries where migration policy is a EU priority and membership is ruled out or distant. Their selection follows therefore a most-similar case study design but offers variation of internal political structures, approaches and migration flows along the Southern and Eastern EU border.

The external governance approach is useful to conceptualise developing cooperation structures and dynamics at the sector level. Nevertheless, the following section highlights that its dichotomous understanding of EU-NMS relations, its structuralist approach and its ‘level-of-analysis problem’ (Singer 1961) limit its usefulness for our understanding of implementation processes. The second section draws on the implementation literature and organisational sociology and proposes an organisational perspective to overcome these limitations of the external governance approach. An organisational perspective suggests that EU external governance encounters its

empirical limits in macro-political, distributional and especially organisational factors.<sup>1</sup> It provides context-sensitive understanding of the implementation environment and conceptualises how intergovernmental relations impact on implementation. The empirical sections evaluate the influence of these factors on implementation of EU migration projects. The specific content and scope of projects benefits external governance as it focuses EU interest and facilitates empirical observation. Findings from Morocco and Ukraine show that perceived migration pressures and organisational environments have decisive impact on project implementation and are largely beyond the reach of EU external governance.

### **External governance and implementation**

The external governance approach aims ‘to capture the expanding scope of EU rules beyond EU borders’ (Lavenex and Schimmelfennig 2009: 791). The external governance approach looks at the competing influence of (a) EU institutional factors, (b) domestic factors in NMS and (c) ‘power-based’ explanations of interdependence and the influence of external ‘governance providers’ on selection, adoption and application in NMS. Taking the aim of the approach literally, the term ‘scope’ has until now been narrowly interpreted as ‘range of application’ following an interest in compliance and policy transfer in accession and neighbouring countries. 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 of the term are better suited to capture the EU’s limited influence on complex implementation processes. Prevalent theorizing on external governance has three shortcomings

regarding implementation that make adjustments necessary: it implies dichotomous EU-NMS relations, overemphasises structural elements and mixes different levels of analysis.

The external governance literature emphasises institutions and the cooperation environment in a 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: 946-947; Lavenex and Schimmelfennig 2009: 795, 802-803). Although the approach stresses that the EU does not fit the unitary state actor model, it slides into a dichotomous understanding of EU versus NMS influence with the outcome being either adoption or violation of EU rules without being able to account for distortions of EU policy during implementation in NMS (Lavenex and Schimmelfennig 2009: 792, 802). By viewing rule selection, adoption and application as sequential stages, implementation is understood as a hierarchical, top-down process, as indicated by the misleading term ‘application’, reducing local implementers to mere decision-takers. This contributes to a Eurocentric perspective because the appropriateness of EU rules and the motivation for applying them in the socio-political context in NMS are left unquestioned. However such a EU “implementation chain” into NMS is unlikely because NMS without membership perspective are outside the EU legal framework with no obligation to implement and the EU lacks credible sanctions and sufficient incentives (Wunderlich 2011).

A dichotomous weighing of EU against domestic factors is little helpful to comprehend implementation processes under condition of complex interdependence

between governmental, non-governmental and international organisations. Interests and ideas on migration are diverse and conflicting within states and at EU level (Joppke 1998; Boswell 2008). Interest to cooperate and ideas how to do so can 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 migrant rights organisations (Guiraudon 2000). A more fluid conceptualisation of implementation processes with space for agential factors is necessary in the external governance approach.

Implementing EU legislation in member and accession states brings about adaptation ‘with national colours’ (Risse et al. 2001: 1). Outside the EU legal framework, implementing external policy offers even more room for interpretation. In the context of project implementation, ‘adoption’ does not necessarily refer to legislative changes but to the willingness of NMS’ governments to approve cooperation between migration policy actors. Even though EU projects are the most concrete formulation of its policy, their specific objectives are not set in stone. Implementation and Europeanization studies support that policies are at times deliberately vague because leeway for interpretation can reduce conflict and helps translating policies into national contexts (Mörth 2003; Matland 1995: 158). Although the overall EU policy objective to reduce migration pressures is unlikely to be compromised EU projects could be similarly adjusted following NMS feedback to facilitate cooperation willingness or overcome tensions during implementation. Since these cases blur the boundary between ‘adoption’ and ‘implementation’, implementation is here understood more broadly as ‘a process of interaction and negotiation, taking place



over time, between those seeking to put policy into effect and those upon whom action depends' (Barrett and Fudge 1981: 4).

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, 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 relate to a macro-level of analysis. Although the macro-context is likely to be relevant because governmental actors can intervene during adoption and implementation, 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 (Lavenex and Schimmelfennig: 792, 803). The next section suggests that an organisational perspective helps to overcome these theoretical limitations of the external governance approach in order to analyse implementation 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. While historical, socio-cultural, geopolitical, economic and other factors may affect EU-NMS relations, cross-border implementation of EU projects depends consequently on those factors that are directly relevant to implementing organisations and affect their willingness and ability to act. Taking ‘Organisation 1’ as an example of an implementing organisation, it has to make sense of three major environmental factors that mediate these broader contextual influences: (a) the policy ‘problem’ that is at the centre of the policy intervention (b) the macro-political context and (c) the immediate organisational context with which the implementing organisation is interacting (Figure 1).

[FIGURE 1 ABOUT HERE]

If an implementing organisation were purpose-driven, it would need information about the policy ‘problem’. Distributional factors relate to the role of changing migration movements, their composition and other organisations’ influence on their trajectory and size for organisational action (termed (a) in Figure 1). Organisations do not only have intended but also unintended effects on migration, for example as externalities of EU integration (Lavenex and Uçarer 2002). Information is scarce but particularly needed to work on a policy ‘problem’ that is as complex and volatile as international migration. It escapes causal and predictive theorising and appears to be insoluble given the conflicting interests in this policy field and interdependencies with other policy areas (Boswell 2009: 169-170; Peters 2005). Moreover, the cross-border context contributes to information gaps and increases uncertainty for external action (Wunderlich 2011).

Constructivist accounts stress that “problem” perceptions influence subsequent policy responses (Peters 2005: 353-354). Hence, organisational action does not follow objective accounts but the organisation’s understanding of migration. “Migrant groups” are frequently targeted following their “usefulness” (e.g. labour-market skills, remittances), their “legitimacy” to cross borders (e.g. nationals, asylum seekers, illegal immigrants), socio-cultural links and ethnic preconceptions (e.g. German *Spätaussiedler*; xenophobia against Roma) or expectations about future migration movements. The motivation of NMS organisations to act on particular migrant groups might therefore be independent from but coincide with EU policy objectives. Actors can thus hold approaches to migration that are more similar across borders than within the same state.

Macro-political factors (termed (b) in Figure 1) refer to broader relations between the EU and NMS beyond migration such as overall trade relations, regional security issues, *et cetera*. They relate to external power relations and complex interdependence as conceptualised in ‘power-based explanations’ of external governance (Lavenex and Schimmelfennig 2009: 803-804). A strong dependence on the EU at the macro-level would make compliance likely with EU objectives at the sector level. 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 with interdependence between emigration, transit and immigration countries. 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. Macro-political factors are likely to influence general cooperation willingness during adoption and could subsequently feed through to implementers and affect distinct points of a project such as initiation, evaluation and renewal.

Organisational factors (termed (c) in Figure 1) refer to issues emerging from the political structures of the EU and the NMS and from relations with other organisations in the policy field that shape the role, capacities and understanding of the implementing organisation. In contrast to distributional or macro-political factors, organisational factors are most immediate to implementing organisations and therefore have the largest potential to account for implementation dynamics of EU projects. The role of administrative capacity for implementation is well established in the literature, such as staff numbers, skills' levels and material resources that impact on the organisation's ability to understand and act on its environment (Treib 2008: 11). Where implementation requires cooperation, certain conditions are required to achieve meaningful action: cooperation partners need to be available and mutual understanding should exist of migration and each others' role in the cooperation. Previous regulatory frameworks, established institutional structures and practices in NMS matter to how EU policy influences the national level (Lavenex and Schimmelfennig 804-805; Kassim 2003: 103-104). From an organisational perspective established structures and practices are important because they provide implementers with standard approaches how to engage with whom and shape their perspectives on migration. If established approaches overlap with project objectives

then they are conducive to implementation while lacking structures or conflicting approaches are hindering.

However, organisations are not only functionally driven. Rather than following orders or agreeing with policy objectives, their interest in EU projects might aim at increasing their own legitimacy or expanding their mandates and capacities (March and Olsen 1998; Meyer and Rowan 1977). In order to pursue these self-involved interests implementers need certain leeway in administrative structures and horizontal divisions can allow for conflict, competition and “turf wars” that undermine EU project implementation. In contrast, a dominating actor or effective coordination mechanism between implementers should weaken these tendencies. Turmoil can originate from the political system if administration becomes politicised (Kassim 2003: 102-104). If various implementers align with or are instrumentalised along party-political or constitutional fault-lines, then this can distract implementers from functional and incentivise non-functional behaviour that can undermines EU project implementation.

The methodological challenge to capture organisations’ perspectives can be met by means of triangulated accounts such as documents and interviews as in the following analysis. 29 semi-structured interviews were conducted with implementers in relevant governmental, international and non-governmental organisations who are involved in planning, implementing or evaluating EU projects at EU level, in Morocco and Ukraine. These were coded with qualitative data software NVIVO for systematic analysis.

## **Implementing EU external migration policy**

EU external migration policy has been implemented since 2001 with a budget of at least €1billion until 2010 in cooperation with NMS actors and with the help of international organisations. While the Council of Ministers sets the general policy guidelines in five-year programmes, first in 1999 and last updated in Stockholm (Council of the EU 2009), the Commission translates these into interventions in NMS. Commission Directorate General (DG) Home Affairs, responsible for migration policy, and DG External Relations (RELEX, now European External Action Service (EEAS)) define external migration interventions. Under conditions of communication gaps and a lack of information regarding the implementation context, the DGs specify policy content in Action Plans and yearly National Indicative Programmes. They select projects for contracting, which are then centrally managed by DG EuropeAid and by the Commission Delegations in NMS that negotiate with local actors on project content, scope and resources, monitor projects on the ground and provide feedback to Brussels. Projects are funded through 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).

The EU invested at least €130million in Morocco and Ukraine respectively for 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). For reasons of comparability only the dominant elements 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 sections assess the empirical limits of EU external governance by analysing the influence of distributional, macro-political and organisational factors on EU 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 EU cannot dictate implementation in either case.

- The Western Sahara conflict has cut Morocco off from sub-Saharan Africa and the border closure with Algeria since 1994 has disconnected it from the rest of the Maghreb (Vermeren 2006: 82-84, 91-92). 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 and dominant trade relations mean that the EU and its member states are Morocco's most important partners.
- Despite political support for European integration since the early 1990s and hopes that the 2004/2005 Orange Revolution would overcome fatigue in Euro-Ukrainian relations (Wolczuk 2006), Ukraine's EU accession is but a far prospect. This situation has not improved since President Yanukovich, who was ousted in 2004, regained power in 2010 and has strengthened authoritarian rule (Economist 2011). Socio-political, economic and historical

relations with Russia are close but with recurring tensions around gas import, Ukraine's future NATO membership and territorial disputes. Besides the EU, Russia is Ukraine's most important trade partner (both with about 30 percent of Ukrainian trade).

Power-based explanations would therefore indicate that Morocco's one-sided dependence should make it more receptive to EU external governance than Ukraine's more favourable bargaining position with its (largely rhetorical) EU membership aspirations and fluctuating relations with Russia.

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 post-Orange Revolution elite signed a EU readmission agreement in 2007 as a sign of commitment to further cooperation (EU1; EU10). Although the linked visa-facilitation agreement can be read as an incentive, it benefits but a select elite. Only visa liberalisation would offer a credible incentive but EU requirements such as good rule of law and control of irregular migration are independent of macro-political relations and difficult to attain for Ukraine (Jaroszewicz 2011). The readmission agreement and border management cooperation have brought Ukraine closer to EU policy and the Commission offered financial and technical assistance for their implementation (EU1; EU10).<sup>2</sup> However, macro-political factors cannot explain failing compliance and inter-organisational conflict between state actors that need to be attributed to organisational factors.



Although some argue that macro-political relations allow the EU to dictate Morocco's migration policy (Elmadmad 2007; Charles 2007) and Morocco portrays itself as the EU's 'good pupil' (EU2; EU8), empirical evidence shows little support for these accounts. The EU had aimed at border control cooperation with Morocco since 1998 but had to wait for seven years for it to progress. Morocco agreed to EU cooperation only after it established cooperation with Spain, that was strongly motivated by concerns on both sides about unregulated immigration. Spanish-Moroccan cooperation furthermore allowed for Moroccan concerns to enter the EU agenda. EU-Moroccan cooperation was therefore not dictated by the EU but reflects Moroccan concerns and shows feedback loops that are documented regarding the migration and development component and a stronger emphasis on the partnership principle in the EU's global approach to migration (EU2; EU6; Lavenex 2008: n.8; Wunderlich 2010: 260).

The EU accounted for nearly 60 percent of Morocco's trade but Morocco only for 0.7 percent of EU trade in 2010, which would indicate considerable EU macro-political leverage. However, substantial "carrots" such as the 2008 Advanced Status Agreement have not been able to pressure Morocco into signing a EU readmission agreement since 2000 (EU8; MA1). Similarly, EU-Ukrainian relations are currently upgraded by a new association agreement despite manifold implementation problems around migration. Organisational factors at EU-level explain why adoption and implementation problems do not lead to negative conditionality as also not observed in other policy fields (Youngs 2009; Lavenex 2008). Firstly, different DGs have their own agendas and priorities, which they want to protect from interference by other DGs. Although former DG RELEX did not ignore DG Home Affairs' priorities, it

viewed a contamination of overall ‘good’ bilateral relations on the base of non-cooperation on a separate (albeit EU priority) issue not as opportune (EU2; EU4; EU8). Secondly, conditionality instruments are too “clunky” to respond to intricate implementation problems. Furthermore withholding EU-funding does not leave governmental organisations worse off since it is limited in time and not part of their standard budgets (EU4; EU5). The EU’s weakness to successfully influence NMS implementers’ behaviour as well as Morocco’s ability to effectively oppose EU pressure during adoption can be better explained by organisational and distributional factors than by macro-political dependence.

### **Distributional factors**

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

It is largely externalities of European policy that shape implementers’ reactions to EU cooperation in both countries. 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 tightened western borders due to the 2007 Schengen accession of Poland, Hungary and Slovakia have raised fears in the Interior Ministry and State Border Guard Service (SBGS) that Ukraine is becoming an open receptacle for transit and immigration (EU10; PE2). Similarly, Spain's strengthened controls at its Mediterranean borders since its Schengen accession raised concerns about drowned citizens in the Moroccan government, contributed to Morocco sanctioning illegal migration and led to cooperation with Spain on border controls and readmission of Moroccan illegal migrants (EU9; PE3; NGO3). However, particularly concerns about sub-Saharan migration have triggered Morocco's substantial engagement with EU border controls. When thousands of sub-Saharan migrants tried to enter the Spanish enclaves Ceuta and Melilla from Moroccan territory in 2005, the events manifested concerns about uncontrolled sub-Saharan immigration in the Moroccan Interior Ministry (MA2; MA3; IO1). Open hostility was expressed by an Eastern Moroccan prefect who commented bluntly about the effects of tightened EU border controls that Morocco was not willing to become 'the rubbish bin of Europe' (Le Figaro 2005). These attitudes 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 UNHCR between 2004 and 2007 (MA1; IO6).

Ukrainian and Moroccan actors respond to concerns about changing migration flows that are more driven by perceptions of and expectations about migration than by factual evidence. The number of irregular migrants in Morocco was estimated at

between 10,000 and 20,000 in 2008, i.e. around 0.05 percent of its national population with a total immigrant population of 130,000 (IO1; MA1; NGO3; EU8). Despite this small number, Morocco opposes a EU readmission agreement because it would be obliged to accept illegal immigrants independently of their nationality if they transited through Moroccan territory (EU8; EU9). The difference between estimates of the total number of irregular immigrants in the Ukrainian case is almost comical ranging from 160,000 to 6 million (Uehling 2004: 81-82; European Commission 2007: 28; UA2). Although IOM considers these numbers as exaggerated, Ukrainian concerns have run high about EU readmissions of foreigners under the agreement that entered into force in 2010. The perception of being under siege by irregular migrants provides toehold for EU cooperation of Ukrainian security services (UA1; PE1; IO2). Far from being reactive, the Ukrainian government is also setting up its own network of readmission agreements as a practice adopted from the EU and its member states. Concerns about immigration rather than emigration evidence that engagement with the EU agenda on illegal migration is self-motivated rather than EU induced. For example, SBGS security mentality does not extend to Ukrainian migrants, which is at odds with the EU's fight against illegal migration and EU-Ukrainian border projects. 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).

Discriminatory and xenophobic practices against recent immigrants and asylum-seekers have profound effects on implementation of EU projects in both countries. The (non-)policy towards sub-Saharan migrants in Morocco is one of toleration rather than engagement, which severely hinders the implementation of EU asylum projects.

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* rather than to build up an asylum system that provides protection and to adhere to migrants’ human rights. A securitised perspective in the Ukrainian Interior Ministry and SBGS makes chain-*refoulement* an unintended but likely outcome of the EU readmission agreement in the context of a dysfunctional Ukrainian asylum system. Expulsions of foreign citizens by Ukraine went mostly to countries with questionable human rights records and weak or non-existent asylum systems and close cooperation with other ex-Soviet secret services caused *refoulement* (IO4; NGO1). In summary, distributional factors account for why Ukrainian and Moroccan actors support EU cooperation on repressive policy measures. They also explain why these actors undermine international conventions that the EU seemingly wants to propagate in the implementation of its projects.

### **Organisational factors**

As shown above, 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’. While available implementation capacities are crucial for Morocco and Ukraine, their political systems, administrative structures and established migration policy approaches differ significantly. While centralisation in the political system allows central actors to frustrate or drive implementation as in Morocco, fragmentation and competition in the political systems can turn

implementation into a chaotic dance as in Ukraine but can also open surprising opportunities for cooperation with autonomous actors.

Previous policy frameworks and existing interorganisational structures on migration weigh heavy in both cases. In the Ukrainian case, migration policy was historically reduced to the Soviet emigration control regime. In consequence, implementers lack established approaches and internal support structures when engaging on more complex measures other than border controls. In contrast, the Moroccan emigration policy paired with strong control elements (de Haas 2007b) and hegemonic internal structures provide central actors with greater capacities for implementation. However, they pose great challenges at the level of adoption and engagement in EU projects and provide a mainly securitised understanding of migration.

The King of Morocco holds most political power in the constitutional monarchy and nominates the so-called ‘sovereign ministries’ such as the Minister of Interior. Interparty competition is strictly controlled and the positive referendum outcome for constitutional reform will make few changes to the King’s power (Benchemsi 2011). 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-Moroccan border cooperation between 1998 and 2005, the Interior Ministry agreed to

cooperation largely due to the fear of uncontrolled sub-Saharan immigration as explained above 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). Consequently, the Ministry implemented stronger border controls particularly in the South where Moroccan emigrants were unaffected and control over the disputed Western Sahara territory was strengthened. If EU support also aimed at the installation of an inter-organisational observatory with a broader and more integrated perspective on migration as indicated by Commission officials that would have benefited other Moroccan migration policy actors, 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. Its centralised position in the political system and migration policy field has provided it with effective influence on EU project content.

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 weakened under the Orange Revolution President Yushchenko (2005-2010), tensions between Presidency and Government became common. They 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 inter-agency cooperation. A three-year struggle between Cabinet and President broke out whether

the body should be inter-ministerial or located in the Interior Ministry. It drew in fragmented migration actors on either side depending on where they saw that their policy agenda and institutional future was best catered for. Continuous organisational restructuring brought the national asylum service to collapse in 2007 when the term ‘migration’ was not only erased from its name but also from its mandate and eliminated the central decision-making body for asylum cases (UA2; IO4). 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 in 2010. The newly created inter-ministerial State Migration Service was abolished, subordinated to the Interior Ministry and secured the dominance of security approaches to migration (UA1; UA2; PE1). How this will affect horizontal divisions at the migration policy level in the future is unclear.

So far six different state actors have been responsible for the area of migration in Ukraine with considerable autonomy from each other (EU10; IO2), with signs of unclear and overlapping competencies, regulatory contradictions and turf wars as also observed in other areas (Wolczuk 2006: 16). This has hampered effective coordination and triggered open arguments between migration policy actors, even during EU-Ukrainian negotiations (EU3; EU10). Where implementation depends on coordinated action fragmentation is problematic as shown in two examples. (1) 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). (2) 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). EU-funding can ease these disputes over material interests and can create incentives to engage in projects as with the Moroccan Interior Ministry. However, it has only limited influence on coordination issues, competition and fragmentation, especially regarding conflicting migration approaches as in the SBGS case, that pose serious challenges to EU implementation.

As for implementation at large, organisational capacities are crucial for ‘the deepest impact of external governance’. Frequent changes at governmental level and the politicisation of public administration in Ukraine sweep a many officials in and out of office. In contrast to more stable staff capacities in Morocco, relevant state officials seem to change almost every half a year in Ukraine, constantly reducing institutional memory, increasing staff training needs and affecting policy coherence. International organisations and NGOs struggle to cooperate more in this volatile environment than in Morocco, where cooperation depends on approval by a dominant actor that might be difficult to secure but that guarantees far-reaching support (EU10; UA3; IO5; IO7; NGO1; IO1; IO6).

High levels of corruption have detrimental effects for EU external migration governance, for example, where corruption among border guards has facilitating effects on human trafficking and illegal migration (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 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). Similarly to the Moroccan Interior Ministry but with less strategic impact on project content, SBGS’ autonomy and longstanding leadership allowed it to adopt ownership of EU border management projects and to 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: 152; Schimmelfennig and Sedelmeier 2004: 668).

## **Conclusions**

A 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 external governance in the case of EU external migration policy illuminates this general statement. Studying implementation as the deepest impact of external governance reveals limitations of present theorising. A dichotomous and structuralist view on EU-NMS relations as well as a hierarchical understanding of implementation cannot account for the complex inter-organisational cooperation in this interdependent policy area. A look at the implementation literature and on organisational sociology draws closer attention to the “world of implementers”. The proposed organisational perspective overcomes limitations in the external governance literature by producing dynamic and actor-centred accounts of their structural environments that are sensitive to the changing challenges that implementing organisations respond to. It addresses the levels of analysis problem, has a more fluid understanding of the link between governmental decision-making and implementation with limited feedback loops and acknowledges more adequately tensions within administrations and overlapping approaches of actors on both sides.

An organisational perspective highlights 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 on policy output. Macro-political factors are relevant for the adoption of EU approaches and cannot drive implementation dynamics *per se*. They rather provide the background for implementers to engage in, exploit or subvert EU implementation. Regarding distributional factors, the actual size of migration movements matters less than organisations' perceptions of international migration. The more central an organisation to the migration policy field, the more likely it is that its migration approach can influence whether and how it engages with EU implementation. Distributional factors matter therefore at the levels of adoption and implementation. It highlights that a rigid division between the two misses the potential of feedback links.

Organisational factors mark most clearly the empirical limits of external governance and confirm the emphasis in the external governance literature on institutional dynamics over power-based arguments. A firm hierarchical framework that penetrates all levels of politics provides central actors with opportunities to frustrate or drive EU implementation strategically while "lightweight" organisations have little chance to use their opportunities to actively engage with EU policy projects on their own behalf. This highlights that divisions along national borders should omit the potential overlap of actors' agendas on both sides. Where party-political divisions create turmoil in the policy field or chaos already reigns, implementers have opportunities to pursue their individual interests in EU projects albeit it hampers organisations' strategic influence on EU policy and project outlines. However, more complex interventions that require coordination and meaningful cooperation suffer under these conditions. Hence, 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 depending on their interests, the structure and dynamics of their organisational environment. Against the general belief, weak state capacity cannot only frustrate but also open space for external governance whereas strong state capacity can inhibit or strategically distort 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 NMS and in other policy areas where it aims at concrete action on a policy “problem” in a scenario of complex interdependence. Distributional and particularly organisational factors regarding the political system and the migration policy field are largely beyond its reach and draw the empirical limits of EU external governance.

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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]

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

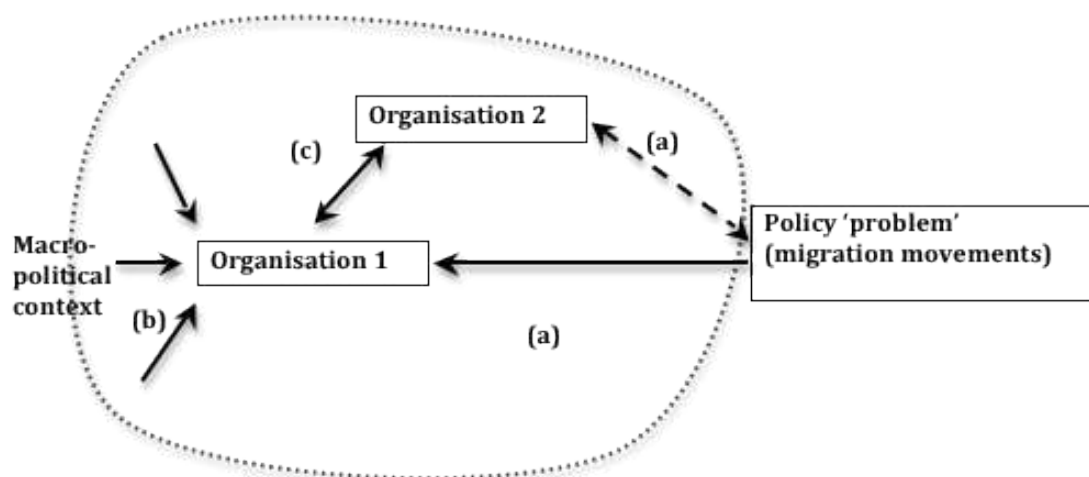


Table 1: Interview codes

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	Rabat, 26/12/2008

	l'Homme, Morocco	
PE1-2	Policy Experts	Kyiv, 26 and 27/3/2008
PE3	Policy Expert	Rabat, 1/12/2008

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