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EU promotion of democratic governance in the neighbourhood

Tina Freyburg, Sandra Lavenex, Frank Schimmelfennig, Tatiana Skripka and Anne Wetzel

ABSTRACT This article analyses the effectiveness of the EU's promotion of democratic governance through functional co-operation in the European neighbourhood. In a comparative study of three policy sectors in three countries (Moldova, Morocco, and Ukraine), we show that the EU is capable of inducing neighbouring countries to adopt policy-specific democratic governance provisions in the absence of accession conditionality. In line with the institutionalist hypotheses, we find that effective rule adoption can be secured by strong legal specification of democratic governance elements in the EU sectoral *acquis* and international conventions. However, successful rule adoption does not necessarily lead to rule application.

KEY WORDS Democracy promotion; democratic governance; European neighbourhood policy; external governance; sectoral co-operation.

INTRODUCTION

Recent studies link the successful external promotion of democracy by the European Union (EU) to a credible conditional offer of membership (Schimmelfennig *et al.* 2006; Schimmelfennig and Scholtz 2008; Vachudova 2005). Whereas accession conditionality alone is not sufficient to bring about democratic change and consolidation in third countries, there is no evidence for EU effectiveness in its absence. Consequently, the prospects for democracy promotion are gloomy in the context of the European neighbourhood policy (ENP), which does not include a commitment to future membership (Maier and Schimmelfennig 2007). In this paper, we therefore propose to probe into an alternative to political accession conditionality – the 'governance' model of democracy promotion.

The governance model focuses on the democratization potential of transgovernmental functional co-operation in individual policy sectors. In this perspective, technical co-operation offers the EU the possibility of promoting democratization indirectly, through the 'back door' of joint problem-solving. In the ENP, co-operation in areas such as the environment, migration, transport or economic policies intensifies, and new structures of external governance emerge that establish stable horizontal ties between public administrations in the EU and third countries (Lavenex 2008). This co-operation is based on

the EU's *acquis communautaire* and designed to approximate legal and administrative standards in the ENP countries to those of the Union as a means of managing interdependence and fostering integration below the threshold of membership. Because these sectoral rules and standards were developed for advanced liberal democracies, they often contain elements of democratic governance that are then transferred to third countries.

In this article, we analyse the effectiveness of democratic governance promotion in key ENP countries. In line with the institutionalist explanation of external governance (Lavenex and Schimmelfennig 2009), we assume that external governance mirrors the EU's internal policy templates and that it is more effective the more strongly democratic governance is codified in the EU *acquis* and other international legal rules. In addition, the institutionalization of transgovernmental networks and the promotion of the same democratic governance norms by other international actors support and reinforce EU efforts. In the next section, we define our notion of democratic governance and introduce the causal mechanisms of the governance model. We then briefly introduce our cases that focus on three sectors (competition, environment, and migration) and turn to analysing the adoption of democratic governance elements in the relevant sectoral *acquis* in three neighbouring countries: Moldova, Morocco and Ukraine.

DEMOCRATIC GOVERNANCE PROMOTION

In order to distinguish democratization at the sectoral level from democratization at the polity level, we talk of democratic governance rather than democracy. Our notion of democratic governance is based on an understanding of democracy defined according to its underlying principles rather than specific institutions embodying them (see Freyburg *et al.* 2007). Since these principles are applicable to all situations in which collectively binding decisions are taken (Beetham 1999: 4–5), they can be translated into sectoral policy-making. Democratic sectoral governance might thus be achieved by incorporating democratic principles into administrative rules and practices within a non-democratic polity.

By focusing on sectoral governance at the level of sub-units of state administration, we define governance with reference to 'how the rules of the political game are managed' (Hyden *et al.* 2004: 2). In this sense, democratic governance is similar to good governance (see, e.g., Kaufmann *et al.* 2005). Good governance, however, refers mainly to the effectiveness of governance and need not be democratic.

To assess how democratic policy-making and rule application are, we use a multidimensional concept of democratic governance. This concept consists of three dimensions on which democratic governance may vary in quality: transparency, accountability, and participation. Transparency refers to both access to issue-specific data and to governmental provision of information about decision-making. Accountability is about public officials' obligation to justify their decisions and actions, the possibility of appeal and sanctioning over misconduct. We distinguish between horizontal accountability that refers to

'all acts of accountability that take place between independent state agencies' (Schedler 1999: 25) such as investigating committees, ombudsmen and anti-corruption bodies, and vertical accountability that emphasizes the obligation for public officials to justify their decisions. Finally, participation denotes non-electoral forms of participation such as involvement of non-state actors in administrative decision- and policy-making (cf. the concept of 'stakeholder democracy'; Matten and Crane 2005). The three dimensions of democratic governance may take different forms in different sectors (see Appendix).

In contrast to traditional notions of democratization that focus on changes in state institutions, the governance approach concentrates on changes in rules and practices within individual policy sectors. These changes occur as a consequence of exposure to the EU *acquis* and administrative policy-making in the EU and its member states, and eventually consist in the adoption of the EU *acquis*. This exposure takes place through interaction at the level of administrative experts. The vehicles of policy transfer are transgovernmental networks rather than intergovernmental negotiations between state representatives or transnational exchanges with civil society.

In conceptualizing the conditions for success of democratic governance promotion, we follow an institutionalist approach (Lavenex and Schimmelfennig 2009) that focuses on properties of the EU *acquis* and on institutional factors in explaining EU influence. The more the transposition of the democratic governance elements is legally specified in the EU *acquis* and/or international treaties ('codification'), the more this *acquis* is promoted through institutionalized transgovernmental networks ('institutionalization'), and the more EU activities are supported by other international actors ('internationalization'), the more likely it is that these norms will be effectively transferred to the third country. Transgovernmental networks are expected to facilitate communication and engage third countries in joint problem-solving, and the coupling of EU norms with international ones as well as their support by international actors strengthen the legitimacy of the EU *acquis*.

Values on these variables vary from weak to strong (see Table 1). Codification is weak if rules need to be adapted to the context of a third country. This is, for instance, the case with state aid policy. Within the EU, the Commission itself takes on implementation functions; in the third countries, however, it is only the national competition authorities. By contrast, if EU and international rules do not need to be translated to the context of a third state, codification is either medium or strong. It is coded as medium if democratic governance elements are only supported by EU law (or international rules backed by EU reference), and as strong if they are demanded by both European and international rules at the same time – as is the case for water management with a strong EU *acquis* and an international convention such as the Aarhus Convention. All three institutional factors are hypothesized to increase the likelihood of rule transfer. Our two dependent variables are the degree of formal rule adoption in domestic legislation and rule application in administrative practices. The explanatory variables and their operationalization are summarized in Table 1.

Table 1 Operationalization of explanatory variables

	<i>Value</i>	<i>Operationalization</i>
Codification	Strong	Democratic governance elements that are incorporated in both EU <i>acquis</i> and international rules and do not need to be adapted to the context of third countries
	Medium	Democratic governance elements that are incorporated in EU <i>acquis</i> or international rules and do not need to be adapted to the context of third countries
	Weak	Democratic governance elements that are incorporated in EU <i>acquis</i> or international rules and need to be adapted to the context of third countries
Institutionalization	Strong	Both bilateral and EU-controlled regional fora dealing with the relevant rules
	Medium	Only bilateral fora dealing with the relevant rules
	Weak	Only third countries' fora
Internationalization	Strong	Both the EU and international actor(s) promote relevant rules
	Medium	The EU only promotes relevant rules
	Weak	Only international actor(s) other than the EU promotes relevant rules

For our study, we selected three ENP countries: Moldova, Morocco, and Ukraine. With the exception of Israel (a consolidated democracy and therefore not relevant for our study), these three countries are among the most active and most liberal participants in the ENP. In other words, they constitute most-likely cases for effective democracy promotion. This selection implies that we can generalize (only) negative findings: if democratic governance promotion is ineffective here, it is most likely to be ineffective in the remaining ENP countries as well. If it is effective, however, this is not necessarily the case in general.

On the other hand, the three countries differ with regard to size, region, and political system. Whereas Moldova and Ukraine are East European post-communist transition countries that hope to become membership candidates eventually, Morocco is a Mediterranean 'liberalized autocracy' (Brumberg 2002) with no membership perspective. This amounts to a most-dissimilar-systems design (Przeworski and Teune 1970): if we can show that there is a consistent correlation across all countries between the institutional variables and EU rule transfer, we can rule out that these other factors are causally relevant.

The same logic guided our selection of policy sectors: environment (water management), competition (state aid), and migration policy (asylum). All three sectors to varying degrees display elements of democratic governance. Whereas the EU environmental *acquis* provides the most developed democratic

governance provisions, these are comparatively weak in competition policy where they are only poorly codified in the EU *acquis* and not supported by international treaties. Asylum policy is one field of migration policy which contains relatively strong democratic elements originating mainly in international conventions, especially with regard to accountability and transparency (see the Appendix for an overview of the strongest codification of democratic governance provisions in each sector).

EU DEMOCRATIC GOVERNANCE PROMOTION: THREE CASE STUDIES

The following sections provide the results of the empirical analysis of functional co-operation in three sectors – state aid regulation, water management, and asylum – between the EU on the one hand, and Moldova, Morocco and Ukraine on the other hand. The analysis is primarily based on 161 semi-structured interviews conducted in 2007 and 2008 with governmental and non-governmental policy-makers in the three countries and with Commission officials, as well as on pertinent official documents and reports. The sections establish the values for institutionalization and internationalization before turning to domestic adaptation.

Competition policy: state aid

Convergence in the field of competition policy is a priority for EU co-operation with all three countries. As regards *internationalization*, in Moldova the World Bank supports the elaboration of a national competition policy on state aid based on the EU template. Similarly, in Morocco the World Bank and the Organization for Economic Co-operation and Development (OECD) make financial assistance conditional upon the implementation of EU objectives. Ukraine took part in the 2008 OECD Global Forum on Competition's Peer Review, which included state aid. In all three countries, co-operation with the EU is moderately **institutionalized**. While Moldova and Ukraine have not yet participated in a Twinning project on state aid, the EU is actively present as an adviser at various stages of elaboration of competition legislation. In Morocco, the ongoing Twinning project is the main focus of co-operation. Although state aid regulation is not its explicit objective, the issue is covered by daily practices and training programmes. As for regional fora not controlled by the EU, Ukraine is a member of the International Competition Network (ICN), Moldova's membership in the ICN is pending, and Morocco does not *de facto* participate in the ICN despite membership.

In **Moldova**, the Law on the Protection of Competition of 2000 (Parliament of Moldova 2000c) set out a general framework for competition and established a legal basis for an independent competition authority, the National Agency for the Protection of Competition (NAPC), but was not enforced until 2007.¹ Progress in the implementation of the law and the inception of the NAPC

was triggered by the EU (European Commission 2004: 2; 2006b: 10; European Commission/Moldova 2005: Art. 37).

The amended competition law was drafted with the participation of EU-affiliated experts and in 2008 passed a concordance check for compatibility with EU directives at the Centre for Harmonization of Legislation (Parliament of Moldova 2008; National Agency for the Protection of Competition of the Republic of Moldova 2007). Currently, the NAPC, in consultation with international experts, is in the process of preparing a comprehensive law on state aid compatible with EU practices. The draft is expected to introduce to the Moldovan legislation the fundamentals of the principles of *transparency* and *accountability* by affording the NAPC broad competences in receiving information about state aid from all state agencies, requesting further information, authorizing all instances of state aid, investigating possible violations, adopting sanctions and applying to court (Parliament of Moldova Draft 1). At present, however, public *participation* in NAPC activities remains limited. The Social Council of the Agency comprised of representatives of other public administration authorities, business and civil society may comment on legislative drafts, though without voting power, but is not allowed to participate in the NAPC's investigations.

Morocco still does not possess any uniform state aid control regime comparable with that of EU member states. The legal basis of Morocco's competition policy is the Law on Freedom of Prices and Competition from 1999. The Prime Minister is the sole authority who may issue rulings on anti-competitive practices. His decisions can, however, be challenged before an administrative court (*accountability*) (Parliament of Morocco 2000). The Competition Council may give the Prime Minister non-binding advisory opinions on all draft legislation concerning state aid allocation (Parliament of Morocco 2000: Art. 16). Nominated by the King, the Council president enjoys direct royal backing, which makes it a less reliant authority (see El Mernessi 2004: 246–8).² In order to introduce genuine *participation*, the revised competition law elaborated as part of the Twinning project foresees that the Council and the government need to consult interested parties before taking policy decisions. The revised law also improved provisions on *transparency*.

The competition law is only partially implemented. The Competition Council was activated in January 2009, but it is still far from being an independent authority with decision competencies. Progress in *transparency* is limited to provision of information on the total amount and the distribution of aid in the form of annual reports to the Commission (European Commission 2008a). The revised law leaves publication of decisions at the authority's discretion, but grants access to the records. As for *participation*, even the General Confederation of Moroccan Enterprises is only occasionally consulted by the government, usually after the decision has been informally made.

Regarding the legislative approximation of **Ukrainian** law to EU rules on state aid, there have been several setbacks. In 2004, a draft law on state aid which was closely modelled on EU *acquis* provisions was rejected by the Parliament (European Commission 2006c: 11). In 2007, the Law on Protection of

Economic Competition, which had been amended with the aim of introducing provisions on state aid control, also failed in Parliament (Parliament of Ukraine Draft 1; European Commission 2008c: 11).

Without an appropriate legal framework, the Ukrainian competition authority 'is not provided with the adequate authority required for the independent supervisory authority to exercise the control on state aid' (ECORYS Nederland BV and CASE Ukraine 2007: 120). The present system of granting aid is thus not *transparent*. In April 2008, the European Commission came to the conclusion that no progress had been achieved in the field of state aid (European Commission 2008c: 11).

Environmental policy: water management

Environmental co-operation is relatively highly *institutionalized* and *internationalized*. Moldova and Ukraine are part of several international frameworks of co-operation on water, particularly the Central and Eastern Europe, Caucasus and Central Asia (CEECCA) component of the EU Water Initiative (EUWI), including national dialogue, the EU-sponsored Danube–Black Sea Task Force (DABLAS), and the UN Environment for Europe Process (UNECE-EfE). As for Morocco, it participates in the Euro-Mediterranean Water Directors' Forum and took part in the Twinning project on harmonization of environmental legislation completed in July 2007. On a regional level, Morocco is part of the Mediterranean component of the EUWI and used to be part of the Short and Medium-term Priority Environmental Action Programme (SMAP) that ended in 2006. Morocco also benefits from the United Nations Development Programme (UNDP), which couples environmental engagement with the promotion of democratic governance.

Moldova was one of the first countries to ratify the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters in 1999. The 2000 Law on Access to Information translated the provisions of the Convention into domestic legislation, not only with respect to environmental issues, but also for all governmental policy-making (Parliament of Moldova 2000). However, 'the requirements of the Aarhus Convention continue not to be fully incorporated into [environmental] legislation' (European Commission 2008b: 16). Furthermore, the observance of the Convention's provisions remains problematic. While the EU sees some progress in Moldova's efforts at increasing *transparency* of environmental issues (European Commission 2008b: 15–16), better openness seems to be a goal in itself and does not serve the improvement of public *participation*. As for *accountability*, there is little, if any, participation of the public in legislative and policy-making processes in Moldova. Although the democratic quality of international co-operation on water is relatively high, this does not translate into Moldova's national policy on water. To give an example, whereas engagement of non-state actors and stakeholders in frameworks such as DABLAS is provided by Moldovan policy-makers as an

example of public participation, no comparable scheme exists for national policy programmes.

The main law regulating water resources in Moldova, the Water Code (Parliament of Moldova 1993), having survived several amendments, did not acquire the provisions reflecting Moldova's obligations under the Aarhus Convention, as well as those reflected in the ENP Action Plan. A new law on water is currently being drafted by the Moldovan Ministry of Ecology and Natural Resources to enable the application of the EU directive regulating water management policy. Among others, the proposed law contains provisions on public *participation* in policy-making (Parliament of Moldova Draft 2: Art. 94).

In **Morocco**, EU influence on the creation of a Law on Access to Environmental Information (*transparency*) following the Aarhus Convention, as well as on policy-specific laws such as modification and implementation of the Law on Water (Parliament of Morocco 1995), is high, in particular as a result of the Twinning's focus on legal harmonization. With the establishment of the Water and Climate Council, the creation of water basin agencies – local 'petits parliaments de l'eau' (Hatimy 2001: 107) – and the development of contractualization (Agoumi and Debbarh 2006: 51), Morocco has developed a participative, consultative and decentralized approach to water management. The Law on Environmental Impact Studies guarantees public access to environmental information (*transparency*) and the right to appeal (*accountability*) (Parliament of Morocco 2003a). Still, Morocco's environmental legislation shows several shortcomings. Authorities are not obliged to communicate their decisions, and claimants of appeals do not participate in juridical procedures (Ministry of Energy of Morocco 2007). As regards *participation*, the Law on Water established the Supreme Council on Water and Climate, a consultative and non-permanent institution consisting of scientific experts and representatives of provincial and professional associations and serving as a platform for the exchange of ideas (Parliament of Morocco 1995, 1996).

Although the transfer of democratic governance elements to Moroccan environmental legislation has been quite successful, these are hardly applied. Administrative structures, such as the Water Council, are 'empty' (Tazi Sadeq 2006: 138–40), and environmental legislation is rarely addressed by implementing decrees. For the time being, the Law on Access to Environmental Legislation has not been ratified by the parliament. *Participation* of non-state actors in environmental decision-making is ceremonial, since they are invited only after decisions are taken. As for *transparency*, information offered to the public takes the form of pre-arranged reports on the state of the environment and public awareness campaigns (European Commission 2006a). At the same time, proactive export-oriented enterprises, foreign investors and municipal councils demand activation of the legally established democratic governance norms.

Provisions on access to environmental information, participation and accountability have been incorporated into **Ukrainian** legislation for many years. A decade ago, scholars acknowledged that '[a]lmost all laws connected

with environmental protection and natural resources usage contain the principles of public *participation* in environmental decision-making and other citizens' rights' (Skrylnikov and Tustanovska 1998: 135). After Ukraine became a member of the Aarhus Convention, several laws were amended accordingly, although some shortcomings remain. Regarding the legislation referring to water issues, mention must be made of the Water Code (Parliament of Ukraine 1995) and the law 'On Drinking Water and Drinking Water Supply' (Parliament of Ukraine 2002), which incorporate most provisions of the EU Water Framework Directive (Stashuk 2006: 48–9).

The result of reforms in the sphere of environmental and in particular water governance can be described as mixed. On the one hand, there are some positive judgements regarding Ukraine's progress in *public involvement* and access to environmental *information* (European Commission 2006c: 15). For example, non-governmental organizations (NGOs) were involved in the drafting of the Drinking Water Programme of Ukraine for 2006–2020 (ECE 2007: 49). On the other hand, however, this does not mean that the situation is satisfactory. Despite the quite developed legislation, implementation remains 'sporadic' (Fermont and Nicilli 2008: 49; European Commission 2008c: 17). *Access to justice* is guaranteed by the law but in practice remains a problem.

Migration policy: asylum

The International Organization for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR) run most projects concerning immigrants, refugees and asylum seekers in the three countries (*internationalization*). These projects, however, are largely financed by the EU. In Ukraine, co-operation on migration has been based on separate Action Plans since 2001, and is additionally internationalized by the General Directors of Immigration Services Conference (GDISC), which often implements EU-financed programmes. Co-operation on asylum policy in Moldova and Ukraine is regionally *institutionalized* through the Söderköping and Budapest processes, networks where information and best practices of EU asylum policy are shared. A regional equivalent in the Southern neighbourhood, which some already call the 'Rabat process',³ is still in its infancy. Overall, however, these networks focus more on the fight against irregular migration than on asylum proper. Asylum is also excluded from the IOM-led 5+5 Dialogue on Migration. Both in Moldova and Morocco authorities only recently started to acknowledge the existence of problems in the migration sector. Owing to Morocco's reluctance to co-operate, exchange with the EU is primarily informal.⁴ Nevertheless, Morocco and the EU have created a working party to deal with social affairs and migration as part of the Association Agreement. Here, the Commission regularly encourages Morocco to implement the Geneva Convention and to fully co-operate with the UNHCR.

In **Moldova**, the preamble to the Law on the Status of Refugees from 2002 (Parliament of Moldova 2002) explicitly states that the law is to bring domestic

legislation on asylum up to internationally recognized standards. The ENP Action Plan encourages further efforts in this direction (European Commission/Moldova 2005: Art. 46) and the first ENP progress report has already acknowledged substantial progress (European Commission 2006b: 11). The recent amendments to the law established the main principles of a human rights approach to refugees and asylum seekers, exhaustively covering the application of the principles of *transparency*, *accountability* and *participation*, such as non-discrimination, fair consideration of applications for asylum, provision of exhaustive information about procedures, possibilities for appeal and contacting the UNHCR representative.

Yet the implementation of legislation acknowledged by the EU is a major problem. The main concern is the non-application of the human rights approach by the Moldovan migration and border control authorities. These principles are almost exclusively implemented by international organizations, such as the IOM and the UNHCR, and Moldovan NGOs supporting refugees and asylum seekers. Moldova has no national centre for temporary accommodation of illegal migrants, asylum seekers and refugees. In 2008, the IOM, financed particularly through the EU programmes on migration, built a Centre for Illegal Migrants which provide its residents with all necessary assistance including qualified legal support. However, the Centre is not operational yet owing to the absence of a normative framework in Moldovan legislation.

In **Morocco**, the legal basis of the asylum policy is the Decree on the Implementation of the 1951 Geneva Convention (Parliament of Morocco 1957). However, it has not been enforced owing to disregard of the legal supremacy of international law in Morocco (Elmadmad 2002). The 2003 Law on the Entry and Stay of Foreigners acknowledges the primacy of international conventions signed by Morocco and introduces a few articles on refugees and asylum seekers following democratic norms (Parliament of Morocco 2003b). Their appearance is claimed to be an EU success.⁵ For example, in the case of a refusal of an asylum application, it obliges the authorities to explain their decision (*accountability*) and inform asylum seekers of their rights (*transparency*), provide access to a lawyer and allow contesting the decision before an administrative court. However, it does not specify the *participation* of other relevant actors. Furthermore, the law considerably strengthens the administration's discretionary use of power (Rbii 2006: 90–5).

The application of the 2003 Law is problematic since without implementing decrees it did not fully come into force. Further, Morocco has no national centre for temporary accommodation of illegal migrants, asylum seekers and refugees. To compensate for this, the Moroccan Human Rights Organization (OMDH) recently opened the Reception and Legal Centre for Refugees. Its effect remains marginal, however, because Moroccan lawyers and judges are not familiar with international standards and deportations proceed too fast for any juridical procedure to take place.

One of the foundations of the **Ukrainian** migration and asylum policy is the Law on Refugees (Parliament of Ukraine 2001). According to the European

Commission, it has some major shortcomings, especially with respect to the accelerated asylum procedure, because this provision is often used to reject claims without substantive investigation. Furthermore, there are limitations to *transparency* and *participation*, since '[i]t does not provide access for legal specialists of non-governmental organizations or UNHCR to refugees' individual files, or for refugees to have legal representation during refugee status determination [RSD] interviews with the Migration Services' (European Commission 2008c: 13).

These legal shortcomings have implications for rule application. The UNHCR concluded that the 2005 amendments to the Refugee Law resulted in more arbitrary rejections. When applications are rejected as 'manifestly unfounded', reasons are not provided in the written notifications (*accountability*). The UNHCR also faces problems getting access to the files of asylum seekers (*transparency*; UNHCR 2007: 6–7, 9, 11). Similarly, lawyers from relevant NGOs have difficulty meeting detained asylum seekers (*participation*). The latter, in turn, often do not receive adequate information from officials about the RSD procedure (ECRE 2008: 65–6). In October 2007, the UNHCR declared Ukraine to be a 'highly inhospitable asylum environment' and advised countries not to return their asylum seekers (UNHCR 2007: 7, 14). However, one development which increases *participation* possibilities is the creation in 2008 of a Council at the State Committee for Nationalities and Religion that comprises state and non-state actors and also some refugees.

CONCLUSIONS

In the concluding section, we present a comparative analysis of the three ENP countries and sectoral policies. Table 2 gives an overview of the findings. We distinguish between strong, medium and weak degrees of democratic governance in legislative rule adoption and administrative rule application.

Two outcome patterns are easy to detect. First, there is a clear discrepancy between rule adoption and rule application: whereas the EU has been fairly successful in inducing the three ENP countries to adopt legislation in line with democratic governance provisions, these provisions have generally not been implemented. Second, rule adoption is strongly correlated with the strength of codification and to some extent with the strength of institutionalization.

In the area of state aid, codification of democratic governance provisions is weak. Furthermore, while the Commission is the superior authority in EU competition decision-making, third states have to establish independent national state agencies. Since democratic governance rules are more difficult to translate directly to a third country's domestic system, rule adoption in the area of state aid is also weak. Conversely, strong codification in the environmental policy of water management – accompanied by high degrees of institutionalization and internationalization – is mirrored in comparatively strong rule adoption (and even moderate application in Ukraine). Here, the specified

Table 2 Comparative analysis

Sector and policy issue		Competition: state aid			Environment: water management			Migration: asylum			
		Moldova	Morocco	Ukraine	Moldova	Morocco	Ukraine	Moldova	Morocco	Ukraine	
Independent variables	Codification		weak			strong			medium		
	Institutionalization	medium (active adviser)	medium (Twinning)	medium (active adviser)	strong (CEECCA, EUWI, DABLAS)	strong (EuroMed Water, EUWI, SMAP, Twinning)	strong (CEECCA, EUWI, DABLAS)	strong (Söderköping process, Budapest process)	medium (EU working party)	strong (Söderköping process, Budapest process)	
	Internationalization	strong (World Bank)	strong (World Bank, OECD, ICN)	strong (OECD, ICN)	strong (UNDP, UNECE-EfE)	strong (UNDP)	strong (UNDP, UNECE-EfE)	strong (IOM, UNHCR)	strong (IOM, UNHCR)	strong (IOM, UNHCR, GDISC)	
Dependent variables	Adoption	Transparency	weak (strong)*	weak	strong	medium (strong)	strong	strong	medium	weak	
		Accountability	weak (strong)	medium	weak	strong	medium (strong)	strong	medium	strong	
		Participation	weak	weak	weak	medium	medium	strong	strong	weak	
		Democratic governance	weak (strong)	weak	weak	strong	medium (strong)	strong	strong	medium	medium
	Application	Transparency	weak	weak	weak	medium	medium	medium	weak	weak	weak
	Accountability	weak	weak	weak	weak	weak	weak	weak	weak	weak	
	Participation	weak	weak	weak	weak	weak	medium	weak	weak	weak	
	Democratic governance	weak	weak	weak	weak	weak	medium	weak	weak	weak	

Note: *Values in brackets correspond to draft legislation.

codification makes transposition in the third countries easier. In addition, institutionalized joint policy-making in transgovernmental networks, such as DABLAS, promotes the translation of adopted rules into practice even if, such as in the case of Moldova, the application of participation and transparency rules remains limited to the DABLAS framework. As for asylum policy, the existence of international norms accounts for medium codification. At the same time, institutionalized networks set up in neighbouring countries tend to focus on fighting irregular migration rather than asylum rules proper.

The analysis thus broadly corroborates the institutionalist explanation: EU impact increases with the institutional strength and density of external governance. Not all conditions are of equal importance, however. The correlation is strongest for codification, which can be seen as a necessary condition. If codification is weak or medium, this (relative) weakness might be compensated by higher institutionalization or internationalization. Whether codification would also be sufficient in the absence of institutionalization and internationalization is hard to judge on the basis of our case studies, because strong codification (in the water management case) is accompanied by strong institutionalization and internationalization. Finally, internationalization is strong throughout and therefore cannot account for variation in rule adoption.

Because the correlation between codification and rule adoption holds across countries and policy issues with otherwise very diverse characteristics, we can regard it as fairly well controlled in a most-dissimilar-systems design. Apparently, the transfer of democratic governance provisions does not depend systematically on the size, region, membership potential, or political system of the country or on the diverse bilateral or policy-specific constellations of interest and power between the EU and individual ENP countries. Although a direct test of the power-based and domestic explanations would have been preferable, we thus feel sufficiently confident to disregard these alternatives to the institutionalist explanation for our selected countries.

In sum, our results demonstrate that democracy promotion does take place and shows effects outside an accession conditionality framework. But is the governance model of democracy promotion a viable alternative to the enlargement model based on political conditionality? First, we do not claim that our findings can be easily generalized to the remaining ENP countries. Here, domestic and power-based explanations may well prove more relevant, and it is plausible to assume that the institutional factors emphasized in our case studies will have a much weaker effect in countries that are less liberalized or less interested in intensifying their relations with the EU.

Second, although we observe an impact on legislation, the application of legislation has been almost universally absent or weak. Thus, our findings strongly resemble the 'decoupling' effects of institutionalization (Meyer and Rowan 1991: 57). When faced with external pressures to conform to a strong standard of legitimacy in their institutional environment, organizations adapt their formal rule structures in order to demonstrate good faith. At the same

time, however, 'implementation is neglected, and inspection and evaluation are ceremonialized' (Meyer and Rowan 1991: 58). Organizations seek to decouple their internal activities from their formal structures in order to preserve those old ways of behaviour that correspond to their internal interests and needs. This mirrors exactly the gap between the adaptation of legislation and its non-application that we observe in the promotion of democratic governance.

This does not mean that primarily window-dressing democratic governance might not create a subsequent and unintended positive momentum. As mentioned in the case study on the environment in Morocco, the fact that democratic governance elements exist in domestic laws already has an impact on domestic actors such as enterprises and non-governmental associations that refer to them in their daily activities, demanding their actual realization. The difference between rule adoption and application may also be reduced over time through the intensification of administrative networking and in particular co-operation in application, such as already practised in some relevant policy networks (e.g. DABLAS in water co-operation with Moldova). In this sense, the EU succeeds in 'implanting' a certain potential for democratization within domestic legislation. Yet the case of state aid legislation in Ukraine presents a clear warning that the prospect of practical application may also endanger the adoption of EU rules. When negatively affected and powerful interest groups cannot be sure that regulatory alignment with the EU will remain mere 'Potemkin harmonization' (Jacoby 1999), they are likely to seek to prevent EU-conforming legislation in the first place.

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APPENDIX DEMOCRATIC GOVERNANCE IN THE SELECTED SECTORAL ACQUIS

<i>Policy sector and issue</i>	<i>Transparency</i>	<i>Accountability</i>	<i>Participation</i>
	<i>Access to information</i>	<i>Access to justice and monitoring</i>	<i>Involvement of non-state actors in decision-making</i>
Competition – <i>state aid</i>	Obligation to provide information and regular reports on <ul style="list-style-type: none"> – situation of state aid for the body granting state aid and for the body deciding on the lawfulness; – application of certain laws, state aid recovery interest rates and the facts under consideration before the final decision is made to the independent authority. Obligation for the body granting state aid to <i>ex ante</i> notification requirement. 	<ul style="list-style-type: none"> – Guarantee of possibility of action of nullity; maintenance of independent and open judicial, arbitrat or administrative tribunals by the body deciding over the lawfulness of state aid; – Review of state aid activities including possibility of sanctioning the body granting state aid in case of non-compliance with the decisions of an independent authority. 	Possibility for interested parties to submit and reply to comments, right to inform about any alleged unlawful or misused aid in investigation and regulation of state aid/subsidies.
Environment – <i>water management</i>	Obligation for authorities to provide information on <ul style="list-style-type: none"> – decisions taken including how public participation was accommodated into decision-making process; – environmental situation. 	<ul style="list-style-type: none"> – Obligation for authorities to justify their decisions and to provide information on legal provisions; – Access to review procedure before a court or independent and impartial body to challenge substantive and procedural decisions for citizens. 	Participation of all willing public in drafting and modification of environmental programmes and plans.

Migration
– *asylum*

Obligation for authorities to provide information on

- motivation for decision and course of procedure at each moment of procedure to UNHCR, the concerned person and their legal adviser;
- examination of application at each moment in course of procedure to UNHCR, the concerned person and their legal adviser.

- Right to an effective appeal before a judicial body against decisions taken on application for asylum including right to legal assistance and representation;
- Establishment of appropriate guidance, monitoring and control system including the possibility of enforcement and sanctions in case of infringement by independent third party.

- Right of UNHCR, IOM and any other agency of the UN to be involved in co-operation on matters relating to asylum policy;
- Allowance to UNHCR, IOM and other agency of the UN to present its views to the authorities at any stage of procedure on individual applications.

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NOTES

- 1 Until the NACP was established to implement the 2000 competition law, the State Anti-monopoly Committee supervised competitive practices in the Moldovan economy according to the 1992 Law on Restrictions of Monopolistic Activities and Development of Competition.
- 2 *Telquel*: 'Conseil de Concurrence. Le coup de pouce royal' (Fahd Iraqi), no. 337, 2009.
- 3 The 'Rabat process' was triggered by the Ministerial Euro-African Conference on Migration and Development in July 2006 and mainly consists of preparatory meetings for the next conference.
- 4 There is an office for refugees and stateless people responsible for assistance to and protection of refugees under the authority of the Foreign Minister which, however, has been closed for some years. In the absence of a national asylum procedure the UNHCR office in Rabat undertakes the determination of refugee status.
- 5 *Telquel*: 'Le Maroc brade la question des immigrés' (Laetitia Grotti), no. 68, 2003.

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