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WORKING PAPER SERIES

**EU-STRAT Working Paper Series**

**Edited by the EU-STRAT Project ‘The EU and Eastern Partnership Countries – An Inside-Out Analysis and Strategic Assessment’ (EU-STRAT)**

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Laure Delcour, Antoaneta Dimitrova, Klaudijus Maniokas, and Kataryna Wolczuk: State Capacity, State Capture and their Effects on the Implementation of Association Agreements in the Eastern Neighbourhood, EU-STRAT Working Paper No. 19, June 2019, ‘The EU and Eastern Partnership Countries – An Inside-Out Analysis and Strategic Assessment’ (EU-STRAT).

ISSN (2510-084X)

This publication has been funded by the European Union under the Horizon 2020 research and innovation programme.

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This project has received funding from the European Union’s Horizon 2020 research and innovative programme under grant agreement no. 693382.

# State Capacity, State Capture and their Effects on the Implementation of Association Agreements in the Eastern Neighbourhood

Laure Delcour, Antoaneta Dimitrova, Klaudijus Maniokas, and Kataryna Wolczuk

## Abstract

The Association Agreements signed with Georgia, Moldova and Ukraine envisage the creation of independent regulatory bodies in a number of sectors, with a view to creating a level playing field. These bodies, if functioning well, should limit the ability of rent-seeking elites (linked via political-business networks) to use political power to extract rents. This paper examines the relationship between capture of the state by rent-seeking elites (state capture) and capacity building for the implementation of Association Agreements. Empirically, it traces the establishment and functioning of the energy regulatory bodies required by the European Union's *acquis* in the three associated countries. We find a differential pattern which corresponds to different levels in state capture, but also to different dynamics over time. While Ukraine has suffered the most from state capture and the effects of transfers of public assets to private wealth have been dramatic, especially in the energy sector, Georgia has not seen such effects. In Moldova, regulatory independence is recently more under pressure than it has been in the past. Overall, while all three countries have set up regulatory bodies as requested by the European Union, in practice the work of the regulator (especially in Moldova and Ukraine) continues to be undermined by political interference, selective application of legislation, and a lack of transparency. Energy regulators thereby remain susceptible to the influence of powerful interests. Therefore, we argue that without fundamental changes in the relationship between dominant elites and the political system, the creation of specific sectoral bodies is insufficient to ensure a level playing field.

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## 1. Introduction

The Association Agreements (AA) that the European Union (EU) has concluded with Moldova, Georgia and Ukraine are complex treaties, which require reforms in multiple sectors and harmonization of multiple standards (Wolczuk et al. 2017). Most of their provisions aim to create conditions for the optimal functioning of Deep and Comprehensive Free Trade areas (DCFTA) between the EU and the associated countries. To make mutual trade opening a success for private actors and citizens, the associated states need to upgrade considerably the capacity of their legislatures to pass relevant legal frameworks and of their administrations to administrate and implement them.

The AAs are remarkable not only for the breadth of relations and broad scope of policy areas that they cover, but also for their support for state capacity building. Capacity building goes beyond the harmonization of specific rules and policies, involving the creation of independent administrative and regulatory bodies to modernize policy sectors and ensure independent regulation. As analyses from the EU's previous capacity building efforts in Central and Eastern Europe show, such institutional upgrades have lasting positive effects on administrative capacity and policy making in general, and the implementation of the EU *acquis* in particular (Dimitrova 2002; Toshkov 2008; Sedelmeier 2008; Börzel et al. 2017).

Establishing such regulatory bodies, however, is far from straightforward. Independent regulatory bodies remove or limit the possibilities for preferential treatment for certain businesses and thereby create a level playing field. Therefore, these bodies, if functioning well, limit the ability of rent seeking elites (linked via political - business networks) to use political power to extract rents.

Based on the few existing studies that have explored this issue, we can expect that the political will for reform and the administrative capacity needed would be affected by state capture. The pattern of these effects, however, may differ per institution, sector and political order in the three countries, which have AAs with the EU. Therefore, in this paper, we will empirically examine the effects of state capture (if any) in the energy sector in Georgia, Moldova and Ukraine.

This paper examines the relationship between capture of the state by rent-seeking elites (state capture) and capacity building for the implementation of AAs. First, we discuss the concepts of state capture and state capacity in general theoretical terms and in the post-communist context. We then zoom in on the potential significance of state capture for capacity building in one specific sector, namely, energy. For all three associated countries, we outline the general progress with reform and trace the establishment and functioning of the energy regulatory bodies required by the EU's *acquis* in more detail.

## 2. State Capture and the Implementation of EU Rules

State capture, in the broadest sense, involves using the state's organizational and political resources for private economic gain or for the perpetuation of economic and political power. Although state capture has existed for a long time and has been analysed in other regional contexts (cf. Migdal 1988), interest in the phenomenon has grown considerably from the late 1990s on, when scholars started noticing and analysing it in the transitions of

post-communist Central and Eastern Europe (Ganev 2007; Grzymała-Busse 2003, 2007; O'Dwyer 2006). Since then, state capture has become more widely known and accepted as affecting state capacity and citizen perceptions in a number of Eastern and Southern European countries. Despite this, it remains a difficult phenomenon to study empirically and to analyse in terms of its effects on the overall levels of state capacity and the administrative capacity in a given country.

Hellman (1998) and Hellman et al. (2000) first analysed state capture in the post-communist countries in Central and Eastern Europe using data from the 1999 Business Environment and Enterprise Performance Survey (BEEPS). They showed that in transition countries, on the one hand, firms influenced the rules of the game (political and regulatory institutions) via payments or links to public officials and, on the other hand, public officials created and controlled private markets for public goods such as security of property rights. These long-lasting relationships between businesses and state officials using state structures for extracting rents were labelled as state capture. Hellman et al. (2003: 752-753) stressed that in the context of weak states<sup>1</sup> and fragmented civil societies, state capture had a significant negative influence on the pace of reforms and the general quality of governance. Ganev's work on Bulgaria (2007) showed via detailed case studies that quality of governance and state regulatory bodies were intentionally weakened to facilitate gains from large scale privatization deals.

However, this literature on state capture in post-communist settings and North et al.'s (2009) framework exhibit certain conceptual tensions and underlying contradictions in their treatment of state capture. State capture, according to the empirical investigations of post-communist transitions cited in the previous paragraph, is mostly seen as an aberration from the state's 'normal institutional operation' and explicitly treated as undermining the effectiveness of governance institutions. For example, Ganev describes the 'early winners' in the post-communist privatization as 'state breakers' because in the historical context of post-communism, elites and entrepreneurs participating in privatization actively undermined the establishment of state regulatory bodies in order to limit their ability to control and constrain them. (Ganev 2001, 2005).

By contrast, in North et al.'s framework (2009), state capture by dominant elites is seen as the default, 'normal' situation in the majority of states defined as limited access orders (LAOs) embedded in natural states. Therefore, it remains an open question whether state capture always undermines the functioning of the state or whether, depending on the type of LAO, some types of dominant elite networks can coexist with relatively well functioning states – what North et al. (2009) call mature natural states.

For this study, the important aspects of state capacity, which we know from the existing literature to be crucial for the implementation of EU *acquis*, are horizontal and vertical state capacity, and coordination of EU affairs. States that have been candidates for EU membership or have advanced AAs with the EU already need to possess a certain level of state capacity in order to deal with the requirements of the negotiations with the EU and with the adoption and implementation of the EU *acquis* (Dimitrova 2002; Dimitrova and Toshkov 2009; Maniokas et al. 2015; Mayhew 1998, 2000).

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<sup>1</sup> Weak states were the consequences of the collapse of the all-encompassing, but shallow communist states. Weak states are defined in this context as states lacking in resources and capacity to make and implement rules and provide basic public services.

As Dragneva and Dimitrova (2009) have shown in their investigation of harmonization of EU rules in Ukraine, reforms that affect oligarchic interests and reduce the room for dominant elites to manoeuvre are resisted or stalled in their implementation. It is clear from similar literature on Central and Eastern European EU member states that public administration reforms, especially provisions on civil service neutrality, limit the opportunities for patronage and by extension, state capture (Meyer-Sahling 2008, 2011).

In the following section, we will briefly present the EU *acquis* that the associated countries need to comply with in the field of energy. Subsequently, for each of the cases we start by outlining some features of the domestic geopolitical, political and economic context and then trace the main steps in the creation of the energy regulators, their functions and their role. Finally, we offer some conclusions on the relationship between state capture and the establishment and functioning of independent regulatory bodies.

### 3. Energy Market Liberalization and the Creation of Regulators in the Market for Gas and Electricity

In line with the EU *acquis*,<sup>2</sup> “a regulatory authority in the field of natural gas and electricity shall be legally distinct and functionally **independent** from any other public or private entity” (article 353.1, Association Agreement Moldova). Independence entails that the national regulatory authority be able to carry out its duties impartially and in a transparent manner. It is therefore regarded as essential for successful energy market liberalization and sector reforms (Energy Community Secretariat 2016: 6). In line with the *acquis*,<sup>3</sup> staff and management should “not be affected by political and specific economic interests, thereby creating a stable and predictable investment climate” (European Commission 2010: 6). The regulatory authority “shall be sufficiently empowered to ensure effective competition and the efficient functioning of the market” (article 353.1, Association Agreement). It should thus have sufficient **competences** enabling it to carry out its tasks with respect to tariff approval, market monitoring, the oversight of energy companies, and consumer protection. Importantly, it should be able to issue binding decisions on electricity and gas undertakings, carry out investigations into the functioning of the electricity and gas markets, decide upon and impose any necessary and proportionate measures to promote effective competition, require any information from [electricity and natural gas] undertakings relevant to the fulfilment of its tasks, and impose effective, proportionate and dissuasive penalties on electricity and natural gas undertakings not complying with their obligations.<sup>4</sup>

## 4. Georgia: a Strategic Approach to a Strong Regulator

### 4.1. Context

There is a notable difference in the extent of state capacity and the qualification of the regime in Georgia, both with regard to other AA states and over time. While all three countries are qualified as balanced openness types

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<sup>2</sup> Article 35(4)(a) of the Electricity Directive and Article 39(4)(a) of the Gas Directive (Directives No. 2009/72/EC and No. 2009/73/EC)

<sup>3</sup> Article 35(4)(b) of the Electricity Directive and Article 39(4)(b) of the Gas Directive (ibid.)

<sup>4</sup> Article 37(4) of the Electricity Directive and Article 41(4) of the Gas Directive (ibid.)



(Ademmer et al. 2018), Georgia is significantly different. It can hardly be characterized as an oligarchic state (Konończuk et al. 2017). State weakness and state capture have characterised Georgia under the late Shevardnadze period; however, after the Rose Revolution, Georgia has also developed a stronger state than Moldova and Ukraine, with essential tax collecting powers and public service provision (World Bank 2012). President Saakashvili has considerably strengthened the state and established a strong regime, which can be qualified more as business capture rather than state capture (Rimple 2012). This regime has encroached on the regulators (Ibid.), pursuing both political goals and goals related to its own survival<sup>5</sup>; there have been few attempts of state capture by powerful business groups. In other instances, political goals were pursued altogether with personal gains, like in the case of hydropower development in Georgia (Ademmer 2017; Green Alternative 2013, 2015).

In terms of regulating energy, Georgia also stands apart from Ukraine and Moldova in several aspects. First, because of its geographical position, its energy reforms could hardly have been motivated by the prospect of energy exports to the EU, as they were in Ukraine (Maniokas et al. 2019)<sup>6</sup>. This lack of urgency delayed Georgia's accession to the Energy Community (EC) a lot when compared to Moldova and Ukraine. It occurred only in 2017, with major obligations postponed to the end of 2018 and 2019, especially with regard to the required unbundling.

Second, reducing energy dependence from Russia has been one of the main driving forces of Georgia's energy reforms (Ademmer 2017), and it was achieved in other ways than aligning its energy regulation with that of the EU (Energy Community 2018)<sup>7</sup>. Georgia exploited its geographic position as a transit country for Azerbaijani oil and its geopolitical importance to Azerbaijan. It also developed endogenous energy resources, hydropower in particular, through the attraction of private investors.

Third, the situation with regard to the energy regulator and its qualification in terms of state capture are also quite particular. While Georgia has committed itself to the principle of an independent energy regulator, an important part of regulatory functions have remained within, or been handed back to the Ministry of Energy. Among other things, this has meant lesser incentives for the capture of the regulator.

#### 4.2. Key actors and steps: Energy regulator in Georgia and the evolution of GNERC

As mentioned above, and in line with the *acquis*, the national energy regulatory authority has to be legally distinct and functionally independent from any other public or private entity, and sufficiently empowered to ensure effective competition and the efficient functioning of the market. The Georgian National Energy and Water Supply Regulatory Commission (GNERC) was created in 1997, and currently operates under the Law on Electricity

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<sup>5</sup> Transparency International Georgia and Patt Rimple's 2012 book *Who owned Georgia 2003-2012* describe many instances of opaque links between the political elites and business in pharmaceuticals, gasoline, IT, mining industry and report on the capture of regulators in particular, such as capture of the Georgian National Communication Commission. Posts were used both for political objectives and for personal gains. For example, the chairman of that commission, nominated in 2009, had previously been one of the main owners of a media agency selling advertisement on television regulated by the same Commission.

<sup>6</sup> Export to Turkey was but it was not conditioned on the compliance with the Energy Community *acquis*.

<sup>7</sup> In its compliance with the *acquis* part of the remit of the Energy Community, Georgia is at a very early stage in most sectors, except for the energy statistics, as attested by the Energy Community, 2018.

and Natural Gas and the Law on National Regulatory Authorities<sup>8</sup> (Maniokas et al. 2019). Georgia is a member of the EC since 2017 and needs to comply with EU *acquis* by the end of the transitional period, which for electricity unbundling is in 2019.

The original GNERC's competences lied in the area of electricity. Its competences were subsequently extended to gas (1999) and water (2007). However, the Ministry of Energy has retained important regulatory powers (Maniokas et al. 2019). In 2005, GNERC lost the power to approve the key documents regulating electricity and gas markets (the Electricity Market Rules and Gas Market Rules), which was shifted to the Ministry of Energy (Energy Community 2018; Interview 1.1)<sup>9</sup>. The mandate to prepare long-term agreements is still within the Ministry of Energy (Interview 1.2)<sup>10</sup>, while GNERC also depends on the government for information and data (Interview 1.3). Moreover, in 2013, the Transmission System Operator and the Ministry of Energy were identified as responsible bodies for developing and approving the electricity Transmission Network Development Plan, while market monitoring and the monitoring of the ten year plan are being implemented by the GNERC." (EaP CSF 2017: 23). The GNERC, in turn, approves a shorter three years plan<sup>11</sup> (Interview 1.1).

Competence for the market rules should get back to the energy regulator, as specified in a new draft energy law, which has been discussed in Parliament at the beginning of 2019 (Interview 1.1).

#### 4.3. *GNERC's independence and capacity*

GNERC's independence is guaranteed by the existing legal framework, which provides for a high degree of independence. As the independent assessment concludes, "since its establishment in 1997, the Georgian Energy and Water Supply regulatory Commission (GNERC) has significantly improved its reputation as an independent regulator not controlled by any state institution" (EaP CSF 2017: 21). The Commission is independent in its activities and is subject to the Legislation of Georgia. Despite some political protests, it was able to raise the electricity tariffs in 2015 and 2017, with the latest increase based on the new methodology developed together with the twinning partner from Austria (Interview 1.1). All its sessions are public.

However, the appointment of the board is not entirely transparent, and procedures for the appointment of the commissioners are complicated (EaP CSF 2017: 24). The report also stated that, "contrary to the requirements of Directive 2009/72/EC and Directive 2009/73/EC, there is no limit to the number of times a commissioner's term may be renewed" (EaP CSF 2017: 30).

The positive assessment of the Regulator has been confirmed in the most recent report of the EC, which confirmed that:

"the regulator has a large degree of independence, including budgetary autonomy. Central legal shortcomings entail the lack of a limit for the renewal of commissioners' terms and criteria for selection of commissioners. A clear timeframe for their appointment procedure is also missing. The competences of GNERC

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<sup>8</sup> Although a new law on energy is in the pipeline.

<sup>9</sup> The new draft law on energy rectifies this and, if adopted, transfers this competence to the regulator.

<sup>10</sup> While the Regulator discusses different ways to deal with this legacy, the practice has been discontinued since the last 3-4 years.

<sup>11</sup> There are also investment assessment rules prepared by the Regulator.

are largely in line with the *acquis*, with one critical exception, which is the right to approve electricity and gas market rules” (Energy Community 2018: 70).

It is important to note that some of the abovementioned shortcomings have been recently corrected. At the end of 2018, a two term limit for the commissioner’s office was introduced<sup>12</sup>.

Legal independence alone is not a sufficient condition for the proper functioning of the regulator. It also should have the capacity to perform its functions. GNERC stands out among regulators in the Eastern Partnership (EaP) countries as more capable than its analogues in Ukraine and Moldova (Interview 1.5). It has recently expanded its monitoring powers (Interview 1.1). However, companies face mostly reputational risks, as penalties remain inadequate (EaP CSF 2017).

#### 4.4. *Development of hydropower in Georgia*

The fact that GNERC was deprived of key regulatory functions is related to a specific field of energy development, which is quite important for Georgia, namely, hydropower.

The development of hydropower in Georgia was an important political project aiming to reduce energy dependence on Russia in line with the EU’s suggestions (Ademmer 2017). It proceeded through a set of policy measures characteristic of the libertarian government in Georgia at that time, mostly through privatization of existing installations and through the attraction of private investors. The setting-up of fair pricing for electricity and, correspondingly, of tariffs based on cost recovery and the collection of energy bills were the first, most important conditions bearing important political costs (World Bank 2012)<sup>13</sup>. They were overcome by using the political objective of reducing dependence on Russia (Ademmer 2017) and restoring round-the-clock supply of energy (World Bank 2012). Another means was to attract private investors, which also needed attractive feed-in tariffs for a long time as well as other incentives to invest. It should be noted that in 2005, in order to privatize the state energy company and to attract private investors with high tariffs, there was a plan even to abolish the independent state regulator altogether (TI Georgia 2008b). Attraction of investors was more important than the development of a transparent energy market.

Russian companies were the first to invest in the Georgian energy market. It took a considerable effort to attract Western investors. Green Alternative, a nongovernmental organization (NGO), uncovers an opaque process of building hydropower plants in its 2013 report (Green Alternative 2013), and provides an analysis of memoranda of understanding related to it. It highlights a different treatment of companies in matters directly affecting business cases, such as bank guarantees, sanctions for not fulfilling obligations and similar (Green Alternative 2013: 9-10). It also reports that some of the companies that had been granted more favourable terms donated large sums to the ruling political party.

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<sup>12</sup> Amendments adopted by the Parliament on December 6, 2018.

<sup>13</sup> One of the effects of the Soviet legacy was that energy resources were considered a kind of public good, and energy was heavily subsidized. It was a major impediment to energy sector reform in post-soviet countries; one of the latest to reform was Ukraine.

Following a deal with the Georgian government in 2006, a Czech company Energo Pro ended up paying around one-third of the amount required in a tender for the purchase of six hydropower stations and three electricity distribution companies (TI Georgia 2008a: 3-4). The government explained this by the commitment of the company to invest into the energy infrastructure that would have otherwise been paid for by the state budget. Whatever the result, the commitment of the company to invest has been reached by promising special conditions in a non-transparent way.

In general, as confirmed by the assessment of the EC, “a major concern for the development of a competitive market and price deregulation in Georgia is the presence of long-term guaranteed power purchase agreements concluded with new generators” (Energy Community 2018: 65). While this practice has been discontinued, the long-term power purchasing agreements are still regarded as the necessary evil indispensable at the time, when Georgia was struggling to attract private investors (Interview 1.7).

We can conclude that the Georgian regulator has not been captured, even though its powers have been curtailed for a certain period. Taking some of the functions of the regulator into the executive and using them to restrict external influence certainly affects its independence, but does not fall within the realm of our definition of state capture. Back then, the Georgian government used these powers mostly for specific political and policy purposes, such as the diversification of the energy supply, the development of hydropower potential in the country and the attraction of private investors in the energy sector.<sup>14</sup> While this process has also served the interests of economic and political insiders, it still can be qualified as ambiguous, but not a case of state capture. The main reason is that the regulator had developed strong capacities within the area of its competences and some of its competences are being further developed.

While the conclusion of long-term power purchase agreements is no longer practiced, it will take time to rectify the existing situation. The regulator considers different options, such as covering the difference between the market price and the tariff set up in the long-term agreement, either through the budget or through other compensatory mechanisms (Interview 1.7). The regulator might eventually get all the relevant functions back once the new draft law on energy is passed.

## 5. Energy Sector in Moldova: Towards Political Dependence of the Regulator

### 5.1. Context

Upon signing the AA in June 2014, the Moldovan authorities reiterated their commitment to implement the EC Treaty, in particular with a view to developing non-discriminatory energy markets in accordance with EU standards (Association Agreement Moldova, preamble and chapter 14). However, the implementation of regulatory reforms aimed at ensuring a transparent functioning of the energy market in line with the *acquis* stumbles against the intertwined interests of dominant elites and oligarchs in Moldova. The resistance of these groups to EU-demanded reforms in the energy sector is particularly visible in their growing attempts to control

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<sup>14</sup> These goals have been achieved through opaque bilateral deals rather than through transparent and universal conditions established by the regulator (Interview 1.4).

the regulatory authority in charge of energy governance. Under the EC Treaty, the latter has indeed a pivotal role to play in ensuring fair and effective competition, and may thereby threaten vested interests in the energy sector.

## 5.2. *Key actors and steps: Energy regulator in Moldova and the vested interests of political elites*

Perhaps paradoxically, attempts by the Moldovan authorities to control the National Energy Regulatory Agency (ANRE) have increased after the country joined the EC in 2010, and crucially over the past five years. This is in sharp contrast to the late 1990s and early 2000s. The establishment of ANRE in 1997 came together with a strong commitment to liberalize the energy market, which was then dominated by state-owned monopolies. In the years that followed its creation, ANRE's capacities were substantially strengthened, thereby turning the agency into an effective regulator whose competences increased over time (Energy Community Secretariat 2016: 6). This coincided with the legal unbundling of the electricity sector and the privatisation of the distribution network. Therefore, at that time ANRE was considered one of the best performing national regulatory authorities in Eastern Europe (ibid.).

However, in recent years, the Moldovan authorities have increasingly interfered in the governance of ANRE, thereby undermining its impartiality and watering down its competences (Groza 2015: 22). Political interference has developed in a context marked by the accelerated oligarchization of Moldova in 2009-13, after the Alliance for European integration gained power (Konończuk et al. 2017: 3). It has only expanded since 2014, when the country shifted from "oligarchic pluralism" to the monopolization of power by one oligarch, Vlad Plahotniuc, whose unchallenged power has turned Moldova into a captured state (ibid.). Since 2014, all key leaders and institutions have systematically sought to influence ANRE's decisions and/or limit its powers, as was illustrated by ANRE's "performance audit" initiated in 2014 by the Court of Accounts, which was assessed by the EC Secretariat as "an ultra vires measure amounting to state control, interfering with ANRE's independence and artificially adding control over [ANRE]", in clear breach of the EC *acquis*, namely Articles 35(4) and (5) of Directive 2009/72/EC and Article 39(4) and (5) of Directive 2009/73/EC (Energy Community Secretariat 2016: 19). In a similar vein, the lengthy parliamentary debates that took place in 2015 over ANRE's budget substantially delayed the budget approval, thereby "endangering ANRE's day-to-day operations" and threatening its financial independence (ibid.: 20).

In essence, such attempts at controlling the regulator are facilitated by the loopholes in the legal framework, which ruled ANRE's governance until a new law was adopted in October 2017. As noted by the EC Secretariat (2016: 11-12), the appointment process of ANRE's directors lacked transparency either with respect to publicity or selection.<sup>15</sup> Importantly, in the absence of clearly defined selection criteria, political criteria were key in appointing ANRE's directors, and "there have been instances where a political party nominated the same persons for ANRE's leadership and management of state-owned companies from the regulated industry" (Tofilat 2017: 9). The procedure and motives envisaged for the dismissal of directors were equally vague, with no clear definition being provided for the concept of "conflict of interest" (ibid.).

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<sup>15</sup> There are no public vacancies, no open competition, and no clear selection criteria (in particular, no specific requirement regarding experience in the energy sector).

### 5.3. ANRE's independence and capacity

Despite these legal caveats, ANRE still displayed a high degree of independence after Moldova joined the EC in 2010. Importantly, it was then able to set tariffs independently from any political influence, to carry out controls on energy operators and to effectively take measures in order to ensure that tariffs are non-discriminatory and cost-reflective. For instance, after conducting controls at TSO *Moldelectrica* and the subsidiaries of JSC *Moldovagaz*, ANRE found unjustified expenses amounting approximately to €25 million and decided to exclude these from tariffs (Tofilat 2017: 51).

Since 2013-14, however, ANRE's room for manoeuvre has been shrinking. This is first and foremost because of the elites' growing attempts to *safeguard their vested interests* in the energy sector (ibid). The saga around the dismissal of its Director-General in 2013-2014 offers perhaps the best illustration of the growing political interference in ANRE's governance. In breach of both national legislation and EU *acquis* (Energy Community Secretariat 2016), in 2013 the Moldovan Parliament dismissed the Director-General Victor Parlicov for reasons that were not listed in the Law on Energy no. 1525, under which ANRE was then operating. While the decision was declared illegal by the Constitutional Court (whose judgement led to reinstalling the Director), in 2014 the Parliament dismissed him again after he was "convicted for not having ensured appropriate storage conditions for secret documents" (Energy Community Secretariat 2016: 15). This accusation was yet another "excuse to set him off" (ibid.). In essence, Mr Parlicov's dismissal and the subsequent dismissal of all other directors was a blatant example of the extent to which the ruling elite can resist reforms when these (in that case, ANRE's decisions) threaten their political and financial interests.

The elites' repeated attempts to *control tariffs* have developed as yet another form of political interference in the Moldovan energy sector. Between May 2012 and July 2015, ANRE failed to approve new tariffs, despite its obligation to do so in line with Directive 2009/72 / EC on common rules for the internal market (Energy Community Secretariat 2016: 22). This period of inertia was followed by a substantial increase in energy tariffs (by 15 % for gas and 37 % for electricity) in July 2015, three months after the EC Secretariat opened a settlement procedure against Moldova to adopt electricity distribution tariffs in accordance with EU *acquis* (ibid.: 15-17). This significant rise was justified by the need to account for the depreciation of the Moldovan national currency. However, ANRE suspended its decision in September 2015 after sharp criticisms and requests to recalculate the tariffs were expressed at the highest political level.<sup>16</sup> Despite the fact that an audit confirmed ANRE's calculations, in January 2016 ANRE decided to decrease gas tariffs by 10.9 %; this decision was made public only a few days after Prime Minister Filip stressed the need for lower energy prices. In light of the strong political pressure, it is perhaps unsurprising that ANRE approved the new tariffs during a closed session, contrary to the provisions of the Law on Decisional Transparency (Tofilat 2017: 52). In a similar vein, in March 2016 ANRE cut electricity tariffs for household customers by 11 %; this followed the indication by the Prime Minister that these tariffs needed to be reduced by at least ten per cent (Energy Community Secretariat 2016: 22). Therefore, in Moldova the approval of energy tariffs does not derive from a fair application of the tariff methodology set by the EC; rather, it reflects the balance between "various opposing political forces (...) and their relative strength at a given moment in time"

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<sup>16</sup> In April 2015, the President of the Parliament requested that tariffs be frozen and threatened to press criminal charges on ANRE if he detected any irregularity in the calculation of tariffs; after ANRE decided to increase energy tariffs, the then Prime Minister officially requested that both the Ministry of Economy and ANRE recalculate the tariffs and Moldova's Supreme Security Council formally requested ANRE to revise its decision (Energy Community Secretariat 2016).

(ibid). Crucially, the attempts to keep tariffs at a low level are meant to prevent consumer dissatisfaction in a context where the state's capacity to effectively deliver public policies is undermined by the elites' rent-seeking behaviour.

#### 5.4. *ANRE and the case of electricity imports*

As a consequence of the authorities' growing pressure over ANRE, the Moldovan regulator is not in a position to ensure a level-playing field for energy operators and to guarantee a transparent functioning of the market. For instance, since 2014 ANRE has kept renewing the license of the Tiraspol-based intermediary company *Energokapital* through which Moldova imports electricity. As a result of a controversial tender in early 2016,<sup>17</sup> Moldova continued to purchase energy from the Cuciurgan power plant in Transnistria, owned by the Russian holding company Inter RAO UES (Nuțu and Cenușă 2017: 10-11). This is despite the fact that buying electricity from Transnistria contributes to fuelling the Transnistrian gas debt, as Transnistria does not pay for its gas supplies and has accumulated debts totalling over 80 % of Moldova's GDP (Caľus et al. 2018; Nuțu and Cenușă 2017: 6; Parlicov et al. 2017). In other words, "purchasing electric power, including the conditions under which it was purchased, should also be considered as debt for natural gas" (Parlicov et al. 2017: 8). However, while it pays only for the costs of processing gas into electricity and not for raw material, *Energokapital* used to sell electricity at a much higher price to the Moldovan state company *Energocom*, thereby making a profit of up to 400 %, which is then allegedly transferred to offshore companies and/or is dispatched among senior politicians (Bird and Cotrut 2016). Importantly, *Energokapital* is apparently linked to the massive bank fraud discovered in Moldova in 2015 (ibid.). It has links to Vlad Plahotniuc (Konończuk et al. 2017: 7) and is said to be a joint-venture between Moldova's key oligarch and the former Transnistrian leader Evgeny Shevchuk (Vlas 2016).

As discussed above, political interferences deriving from state capture have substantially hampered ANRE's ability to effectively monitor the market. Recent developments, however, reflect significant efforts on the part of the Moldovan authorities to increase ANRE's independence and ability to carry out its tasks. This has happened in the context of a stricter EU conditionality vis-à-vis Moldova (Wolczuk et al. 2017). Based upon the assessment carried out by the EC Secretariat (2016), the Energy Law no.147/2017, which was adopted in October 2017, consolidates the institutional independence of the regulatory authority vis-à-vis other bodies (Groza and Rusu 2017: 13),<sup>18</sup> as well as its financial independence.<sup>19</sup> Importantly, the Law has also brought some improvements to the appointment process of ANRE's directors, which takes place through a public competition organised by the Parliament; however, the participation upon the invitation from the Parliamentary standing committee provides the Parliament with a margin of discretion in ensuring the public character of the competition (ibid.: 14). While it is too early to assess the effects of the new legal framework, ANRE's adoption of its own budget for 2018 and hiring of new specialists should be viewed as initial positive signals (Tofilat 2017: 8-9). However, given the entrenched interests of the elites in maintaining the opaque and closed functioning of the energy market,

<sup>17</sup> This tender (among others, the way in which the deadline for submission of offers was shortened) raised suspicions of collusion between competitors, information leaks and pressures on private companies (Nuțu and Cenușă 2017: 10-11).

<sup>18</sup> With one potential restriction: ANRE's Rules of Procedures have to be approved by the Parliament (Groza and Rusu 2017: 13). The Court of Accounts is provided with audit control powers regarding the lawfulness, regularity and efficiency of ANRE's budget formation and execution (ibid.: 14), which de facto excludes control over its performance.

<sup>19</sup> ANRE's budget is approved by its administrative board, who informs the Parliament (ibid.: 14).



strengthening ANRE's independence will be a long-term task requiring constant monitoring and use of conditionality on the part of the EU.

## 6. Energy Sector in Ukraine: State Capture and the Struggle for an Independent Regulator

### 6.1. Context

Ukraine became only the third European country to set up an energy regulator when in December 1994, the National Electricity Regulation Commission of Ukraine (NERC) was created.<sup>20</sup> Yet, the paradox lies in the fact that despite creating such an important body early on, Ukraine has since then been blighted by state capture of the energy sector to the detriment of small energy consumers, public finances, economic growth and the environment but to the financial benefit of a small group of powerful actors. It is in fact through the manipulation of the country's energy sector that vast oligarchic fortunes were made in Ukraine (see, for example, Global Witness 2006).

### 6.2. Key actors and steps: the vested interests of political and business elites

The extent of state capture of the energy sector in Ukraine in general, and the gas sector in particular, is profound and has resulted in a monopolistic market in the hands of a network of a small clique of oligarchs, facilitated by rent-extracting senior state officials. At the heart of it is *Naftogaz Ukrainy*, which emerged from the collapse of the Soviet Union as a vertically-integrated company engaged in gas and oil field exploration and development, production, transportation (as it also owned the lucrative natural gas transmission system operator *Ukrtransgaz*), and supply to consumers. The body, while ostensibly a state-owned joint stock company subordinated to the Ministry of Fuel and Energy to Ukraine, in fact was a fronting institution controlled by and benefitting the governing elites, many of which also held very senior governmental positions and a wide range of business interests (Balmaceda 2013). As will be explored below, they were able to shape the politico-legal environment to socialise the costs of energy (i.e. place the cost on the taxpayer) through vast increases in state debt, to the advantage of their hugely energy-inefficient business interests, which depended on cheap energy supplies in order to generate vast wealth for their owners. Corrupt gas schemes proliferated during the presidencies of Kuchma (1994-2004), Yushchenko (2005-09) and Yanukhovich (2010-14) (Balmaceda 2013; Konończuk 2015).

The extent of this state capture is reflected in *Naftogaz's* financial losses. There are two categories of gas consumers in Ukraine. The first are those who receive the regulated/subsidized gas, and are mainly domestic customers and heat and power supplying conglomerates (which were in the hands of the oligarchs), which along with other public sector bodies collectively consume about 55 % of the gas. The second is the industrial and business sectors (also in the hands of the oligarchs), which are expected to pay market rates (Konończuk 2015). As gas prices increased (owing to Russia raising prices to market rates), the subsidies continued – not only to the domestic consumers who were experiencing financial hardship as a result of numerous recessions but also to the heat and power conglomerates, and the industrial conglomerates (which often masked themselves as public

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<sup>20</sup> The UK established an independent regulatory body first in 1989, followed by Hungary in September 1994 (Energy Community Secretariat 2018).



sector and hence were eligible for the subsidies and in some cases obtained debt relief for gas received) – and *Naftogaz* was forced to cover its costs by borrowing from the state through the issuance of bonds.<sup>21</sup> In effect, to a large extent, the state budget was used to subsidize the profits of the various conglomerates owned by the oligarchs. It has been estimated that *Naftogaz*'s borrowing from the state was behind the increase in Ukraine's budget deficit from two percent of GDP in 2008 to around seven to nine per cent in 2009-10 (Aslund 2014; IEA 2012).

At the same time, the monopolistic position of *Naftogaz* is intricately interwoven with the monopolistic ownership of the *oblgazes* – regional gas companies, which have a regional monopoly on the distribution and selling of gas in the regions of Ukraine (*oblasts*). It has been estimated that oligarchs control about 70 % of the regional gas supply companies (Rozwalka and Tordengen 2016). For example, Dmytro Firtash owns controlling packages in 21 *oblgazes* and has a stake in 10 others, while Rinat Akhmetov, Ukraine's richest man, controls Kyivenergo, Kyiv's *oblgaz* (Chow and Elkind 2009; Sarna 2012; UAWIRE.ORG 2018). A similar, albeit less known, monopolistic situation characterizes the electricity sector with Akhmetov's DTEK group controlling most of the regional electricity companies.

### 6.3. *NERC's independence and capacity*

In the face of such powerfully entrenched vested interests, until 2014, the NERC hardly had any sway over the way that the energy sector functioned. The regulator was frequently restructured – in 2000, it was organised into a central executive body controlled by and accountable to the President of Ukraine, and then in 2011 into a state collegiate body subordinated to the President of Ukraine, but accountable to its parliament, the *Verkhova Rada*. This had no impact on its effectiveness. Throughout its pre-Maidan existence (1995-2013), it was hampered by political interference, a lack of transparency, a lack of regulatory independence, inadequate decision-making structures and governing body structure, as well as limited accountability and transparency.

At first, the accession to the EC in 2011 did not change that. Indeed, despite joining the EC and committing to implement the *acquis*, the shallowness of its commitment to the Community's principles was only too evident (Interview 2.1). If anything, Ukraine's accession in 2011 under Yanukovich was - rather than an attempt to improve the functioning of the regulator by accessing effective practice - a tactical ploy to counterbalance Russia. Kyiv hoped that Russian aspirations to own Ukraine's Gas Transportation Network (GTS) would be in breach of the requirements of the Second and Third package and therefore be blocked by the EU which, in turn, would offer its own financial support for the development of the GTS in Ukraine. However, this hope was dashed when the EU's Energy Commissioner stated that any attempted takeover of Ukraine's GTS by Russia would be a purely bilateral matter (Wolczuk 2016).

The shallowness of Ukraine's commitment to independent energy regulation under Yanukovich was exposed by the extent to which the NERC was a bystander in the face of accelerated state capture of the energy sector in Ukraine during Yanukovich's presidency. So, while some legislative changes were made to support the NERC and reform of the sector, these were either inadequate or contrary to the requirements of the *acquis*. For example,

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<sup>21</sup> Also, the then Prime Minister, Arseniy Yatseniuk, also claimed that 'by strange coincidence, regional gas companies, which were owned by the Firtash-Lyovochkin group, use state-owned gas transportation network for free' (Yeromenko 2015).

in July 2010 the law ‘On the Principles of the Functioning of Natural Gas Market’ was passed in line with the requirements of the Second Package. However, the law failed to supersede other often contradictory acts (such as the Law on Oil and Gas, the Law on Pipeline Transport, the Gas Metering Law and others) (Energy Community Secretariat 2014). Similarly, after accession to the EC, Ukraine committed itself to restructure *Naftogaz* in line with the requirements of the Third Package (see below). However, when parliament amended the law on pipeline transportation, thereby authorizing the reorganization of *Naftogaz*, it served only to offer oligarchs multiple opportunities to take over sections of the state monopoly (Duleba et al. 2012). The energy regulator at the time proved powerless to prevent these acts, with its leadership clearly serving the interests of the ‘insiders’. The NERC was dependent on government preferences on the tariff regulation of energy markets and thereby in contravention of the *acquis*. Moreover, its competencies remained limited, as it lacked the full range of regulatory powers outlined in the Third Package, such as the right to carry out investigations, impose steps to promote competition and market functioning, and issue penalties to energy providers that did not comply with their obligations (DIXI Group 2014).

#### 6.4. *NEURC and the continuous pressure of big interests*

The NERC was dissolved in 2014, to be replaced, by Presidential Decree, by the National Energy Utility and Regulatory Commission (NEURC), an independent collective public authority subordinated to the President, but accountable to Parliament. Crucially the legal basis for the NEURC was improved immeasurably in 2016 with the law ‘On the National Commission for the State Regulation of Energy and Utilities’ which provided a basis for much greater independence of the NEURC compared to its predecessor as it would no longer be subordinated to the President.<sup>22</sup> It was hoped that the creation of the NEURC – with an institutional set up demanded by international donors – would be a game-changer in Ukraine.<sup>23</sup>

As a contracting partner of the EC, Ukraine, via the NEURC, was required to comply with the obligations stemming from the *acquis*, which it signed up to. These included those under both the Second Package of 2003 (which required the creation of an independent regulatory body, regulated access tariffs and the provision of non-discriminatory third-party access through unbundling i.e. the separation of distribution from supplied) and the Third Package of 2009 (which focussed on unbundling, new requirements for systems/transmissions operators and the bolstering of national regulators). These commitments were reiterated in the EU-Ukraine AA.

According to the *acquis*, the governance of the NEURC ought to have been provided by commissioners, which should have been selected through a neutral competition, thereby limiting the political influence of a President who had hitherto appointed commissioners. The competition ought to have been open to all, thereby allowing candidates from a wide-range of backgrounds, including academia, think tanks, and national and international energy organizations. However, the current Chairman of the NEURC and a number of Commissioners were appointed by Presidential Decree.<sup>24</sup> Although the appointments were made prior to the 2016 Law, effective

<sup>22</sup> The Law was drafted with intensive support from the EC Secretariat.

<sup>23</sup> The Organisation for Economic Co-Operation and Development identifies seven key principles which offer a framework for the governance of regulators. They are: role clarity, preventing due influence and maintaining trust, decision making and governing body structure, accountability and transparency, engagement, funding and performance valuation. For an overview of international standards with regard to independent regulators see OECD 2012.

<sup>24</sup> For example, Presidential Decree no. 715/2014 of September 10 2014.

practice would suggest that once the new Law had come into effect in May 2016, the new processes should have been implemented. That would have meant an open competition for the Chairman and Commissioners. This did not happen. Furthermore, of the seven members which made up the Commission (including the Chairman) as of November 2017, owing to the rotation scheme which time-limited Commissioners, four positions were vacant (two positions expired in May 2017 and two more in November 2017) meaning that the NEURC lost its decision-making quorum. This wilful neglect of process was widely interpreted as a deliberate attempt to impede the functioning of the NEURC. While steps were eventually taken to create a competition commission for contenders to the posts, the competition commission itself was made up of individuals who had previously held positions in the energy and public utility sectors (i.e. those involved in state capture) and excluded academics and independent national and international experts. As an interim measure, an amendment to Article 14 of the Law on the NEURC was established which gave the president authority to appoint commissioners, who would act for a maximum of three months unless a commissioner had been selected by the competitive process in the meantime (Energy Community Secretariat 2018). Overall, whether by accident or design, the reversal to direct appointment by the president indicates a lack of commitment of public institutions to comply with legal procedures. The process of appointing new commissioners was completed in June 2018, consisting mainly of sector 'insiders', including former employees of the DTEK group. In other words, despite the change, strong vested interests mean that the NEURC remains pliable to the preferences of top officials, such as President Poroshenko, and the big sector players, such as the Firtash-Lyovochkin group and Akhmetov's DTEK group.

Right up until 2017, the NEURC's failure to act as a fully independent regulator was evidenced by a controversial decision to approve the 'Methodology for the Formation, Calculation and Setting of Tariffs for Electric and/or Thermal Energy Produced on Heat Power Plants, Thermal Power Plants and Cogeneration Institutions' which made reference to the Rotterdam+ formula for the pricing of coal (essentially, the average cost of coal for the preceding 12 months at the port of Rotterdam plus costs associated with delivery to Ukraine).<sup>25</sup> Serhiy Leshchenko, a Ukrainian member of parliament and well-known investigative reporter on corruption in Ukraine, claims that oligarchic energy providers substitute high quality coal from Rotterdam with lower quality coal from Russia in their power stations, thereby pocketing the price difference but also creating significant pollution in Kyiv (Leshchenko 2018). Leshchenko also claims that the NEURC was complicit in favouring oligarchs when setting prices at the expense of the domestic consumer (see also Vorotin 2018).<sup>26</sup>

### 6.5. *External and domestic pressure and the changing role of NEURC*

By 2018, the demand for change from external donors was immense. An analysis by the EC Secretariat very clearly exposed the dysfunctionality of the regulator (indeed, at the request of actors within the regulator itself who were seeking international allies to bring about change). As Ukraine has been hugely dependent on Western aid to finance its increasingly decrepit transportation system it was forced to act,<sup>27</sup> particularly as earlier the

<sup>25</sup> NERC Decision No. 991.

<sup>26</sup> It is worth pointing out that there are many references in the public domain to the extent of state capture of the energy sector in Ukraine, which are in the main the only sources of such data. Such is the opaque nature of the subject that there is little alternative other than to rely on these sources. But while it is almost impossible to prove (or indeed disprove) much of the veracity of this reporting, the fact that it is in the public domain and therefore open to legal challenge by the parties which are being reported on, offers some reassurance as to the validity of the findings.

<sup>27</sup> These included the EU, the EC Secretariat, the International Monetary Fund and the European Bank for Reconstruction and Development as well as the World Bank.

International Monetary Fund made reforms of the energy sector a specific condition for its macroeconomic assistance to Ukraine. Most importantly, international donors have worked in tandem when pushing for reforms. For example, the US is fully aligned with the EU-driven reform of the energy sector.<sup>28</sup>

As a result, in June 2018, the composition of the Commission was renewed. However, new Commission members were sector insiders, i.e. former state officials and employees of energy companies, with no experts or academics appointed. In other words, despite the pressure for change from without, as of late 2018, it is still unclear if any substantive improvement has been achieved. It seems to be part of ongoing but fragmented reforms of the energy sector, whereby the governance of the sector improves only incrementally. For example the EBRD's provision of assistance led to the funding of the international supervisory board of *Naftogaz*, which resulted in the appointment as chair of Claire Spottiswoode, a former UK regulator who oversaw the reforms and unbundling of the energy sector in the UK in the 1990s.<sup>29</sup> In sum, improvements have been made but they remain patchy, and it was clear that domestic actors were still able to control the regulator, despite the pressure from international donors and civil society.

A significant contribution was made by the oversight provided by NGOs with the DIXI group being an outstanding example in the energy sector. Supported by various international bodies, including the EU, DIXI has offered robust oversight of the opaque energy sector. Certainly, DIXI has reported an increase in the transparency of the NEURC, such as NEURC's public hearings and the fact that it has cooperated with the DIXI group to develop an online platform for energy consumers (Interview 2.3). However, a quick perusal of the public hearings, which are available online, prove to be rather anodyne and formulaic exercises, offering little insight into the functioning of the NEURC.<sup>30</sup> As of late 2018, given the short period since the renewal, it is difficult to gauge how independent the regulator actually is, not least because it has not taken bold decisions, which would infringe the interests of any major energy company and exert pressure to curtail their monopolistic practices.

It is worth highlighting that NEURC does not function in a vacuum, and it is increasingly under pressure from wider systemic change. In particular, the head of *Naftogaz*, Andriy Soboliev, (with strong support and insight provided by the chair of the supervisory board) is increasingly putting pressure on the NEURC to work more effectively as a regulator and challenge the veto players' rent-extraction schemes in the sector.

## 7. Conclusions

The literature on state capture, which we discussed above, has been developed mostly in the context of post-communism, but is less rich on insights regarding the interaction between EU association and rent seeking. While we already knew that the establishment of independent regulators limits rent seeking by creating a level playing

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<sup>28</sup> USAID provided assistance to create the NEURC's homepage which drew significant inspiration from that of the Public Utilities Commission of Ohio. NEURC's website also added many features staff saw on the website of the Kentucky Public Service Commission, including the publication of all decisions and protocols of the commission's decisions, as well as live broadcasts and recordings of commission meetings.

<sup>29</sup> The new international supervisory board was appointed (with funding from the EBRD) in December 2017 after the previous one resigned in protest of 'political interference'.

<sup>30</sup> Video recordings of the public meetings of the NEURC are available on the NEURC website at: <http://www.nerc.gov.ua/?id=22280>.

field and a more open market, this paper takes a first step in addressing the question to what extent independent regulatory bodies are affected by state capture.

Examining whether state capture - potentially - has had an impact on the implementation of key provisions of the AAs with Georgia, Moldova and Ukraine, we find a differential pattern which corresponds to different levels in state capture, but also to different dynamics over time. While Ukraine has suffered the most from state capture and the effects of transfers of public assets to private wealth have been dramatic especially in the energy sector, Georgia has not seen such effects and in Moldova, regulatory independence is recently more under pressure than it has been in the past. While the fact that all three countries have independent regulators could be seen as a success and attributed at least partly to the accession to the EC and need to apply the AA and the *acquis*, the various ways in which regulators can be weakened and dependent on political appointments suggest they continue to be under pressure.

Georgia, as described above, had few problems in establishing an independent energy regulatory body as required in the EU's relevant *acquis*, but the powers of the regulator have been curtailed and taken over by government within a certain period of its existence. The need to strategically develop hydroelectric power in Georgia made this weakening of the regulator necessary and also understandable. Measures to increase its independence and competences have been taken in the new draft law on energy, currently in the process of adoption. This situation reflects relatively low levels of state capture in Georgia.

By contrast, in Moldova the trend points in the opposite direction: from more to less independence, and towards greater interference in the appointment of staff and work of the regulatory body. As the case study indicates, since 2013-2014 state capture has been a clear problem for the independent functioning of the regulator. The developments around the personnel, tariff decisions and the whole existence of the regulatory body in Moldova indicate indeed, that dominant elites take active measures to prevent the body's independent functioning. This takes place in the broader context of rent-seeking practices of Moldovan elites in the energy sector. While the issue of the level of tariffs has huge social implications and potentially great repercussions for social stability given the levels of development, the desire to keep tariffs manageable for the people does not seem to have been the driving factor in politically influencing the regulator's work.

In Ukraine, the creation and functioning of the energy regulator has been an important aspect of the broader reform of the energy sector, which must include *Naftogaz* and the oligarch-owned regional energy companies. Therefore, the regulator is only part of a wider ecosystem and its effectiveness is contingent upon the sector-wide reform. Yet, despite political pledges for reforms and formal legal commitments, there is currently no evidence of a broader reform strategy on the energy sector, nor drive for reform within the government, parliament and the presidency in Ukraine. Instead, like in other sectors, reforms are pursued in a piecemeal fashion by reform-minded actors scattered across a number of institutions (Ash et al. 2017). The so-called de-oligarchization of Ukraine has proven difficult to conduct (Interviews 2.2 and 2.4). In this context, the pressures on the regulator are enormous and it is not realistic to expect that somehow the new body will dismantle the complex system of rent extraction in the energy sector. This requires more multi-faceted, long-term and comprehensive efforts, including anti-monopoly policy, anti-corruption institutions and courts, and not least restructuring and/or breaking down of state-owned and oligarchic energy companies in Ukraine. Until these changes are made, reform is likely to be protracted with limited effectiveness, even though energy reform

remains central to broader systemic change. As Konończuk put it: “the gas sector can be considered ‘the mother of all reforms’” (2015: 8). So, while overall, it can be seen that while Ukraine ostensibly has a national regulator, and has put in place legislation to support its effectiveness, in practice the regulator, despite some progress, continues to be undermined by political interference, selective application of legislation, a lack of transparency and thereby remains susceptible to the influence of powerful interests.

The Ukrainian conclusions bring us to a more general point which should be understood when we look at implementation of the AAs. While specific sectoral institutions, legislation or policies may be installed or implemented under pressure, these remain embedded in the general political system and economic and social order of the countries we examine. Without fundamental changes in the relationship between dominant elites and the political system, any specific body or independently regulated sector would come under pressure if and when large business players see their interests as threatened. Therefore, as our three cases illustrate, a functioning regulatory body is a necessary but not sufficient condition to yield positive effects on administrative capacity and policy-making.

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## **List of interviews**

### ***Georgia***

Interview 1.1 with an official from the Energy Regulator, 15 January 2019.

Interview 1.2 Ministry of Energy, Tbilisi, 5 April 2018.

Interview 1.3 EU technical assistance expert (regional, energy), (via Skype), 10 April 2018.

Interview 1.4 EU technical assistance expert (regional, energy regulators), Vilnius, 11 April 2018, and Vilnius, 8 January 2019.

Interview 1.5 Expert, Secretariat of the Energy Community, (via Skype), 18 April 2018.

Interview 1.6 EU energy policy expert, (via Skype), 19 December 2018.

Interview 1.7 Commissioner, Energy Regulator (GNERC), (via Viber), 15 January 2019.

### ***Ukraine***

Interview 2.1 with two Ukrainian former officials who were involved in Ukraine's accession to the Energy Community, Kyiv, 20 June 2012.

Interview 2.2 with an EU official, Brussels, 12 December 2017.

Interview 2.3 with a representative of the DIXI group, Kyiv, 19 September 2018.

Interview 2.4 with a Ukrainian energy expert, Kyiv, 17 September 2018.



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## **The EU and Eastern Partnership Countries An Inside-Out Analysis and Strategic Assessment**

Against the background of the war in Ukraine and the rising tensions with Russia, a reassessment of the European Neighborhood Policy has become both more urgent and more challenging. Adopting an inside-out perspective on the challenges of transformation the Eastern Partnership (EaP) countries and the European Union face, the research project EU-STRAT seeks to understand varieties of social orders in EaP countries and to explain the propensity of domestic actors to engage in change. EU-STRAT also investigates how bilateral, regional and global interdependencies shape domestic actors' preferences and scope of action. Featuring an eleven-partner consortium of academic, policy, and management excellence, EU-STRAT creates new and strengthens existing links within and between the academic and the policy world on matters relating to current and future relations with EaP countries.

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