

# Multilateral institutions, accession conditionality and rule transfer in the European Union: the Energy Community in South East Europe

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## ABSTRACT

Conditionality is widely used by international organisations to induce “client states” to engage in structural reform. In the European Union (EU) it plays an important role in ensuring that accession countries adopt EU rules as a condition of membership. Reliance on external incentives, however, limits the effectiveness of bilateral accession conditionality, especially for pre-accession countries with uncertain membership prospects. This article argues that multilateral institutions can boost the rule transfer effects of bilateral accession conditionality by reinforcing its incentive structure. The contention is tested by empirical research into the Energy Community in South East Europe. The research uses cross-national and cross-sectoral comparison to evaluate the rule transfer effects of Community institutions relative to accession conditionality and the terms of energy interdependence. It finds that whilst accession status is the main predictor of alignment with the energy acquis, there is evidence that multilateral institutions of the Energy Community exert a significant reinforcement effect.

Key words: *energy, Energy Community, European Union, multilateral institutions, rule transfer*

## *Introduction*

The European Union (EU) is increasingly active in projecting its rules and norms externally. It is widely agreed that the most successful form of external rule transfer is enlargement, and that accession conditionality is the “cornerstone” of its success (Schimmelfennig and Sedelmeier, 2004; Schimmelfennig, 2008; Lavenex and Schimmelfennig, 2009). A country’s progression towards accession is contingent on the condition that it adopts the rules of the EU acquis, and compliance is enforced through monitoring and gate-keeping during the accession process. The process is essentially bilateral. Compliance is monitored and enforced through engagement between the EU and the aspirant member state, and is rewarded by a progressive upgrading of the country’s bilateral relationship with the

EU from trade and cooperation agreements, through association agreements to full membership.

Bilateral accession conditionality worked well in the context of the EU's 2004 enlargement into Central and Eastern Europe (Lavenex, Lehmkuhl and Wichmann, 2009). Observers are much less convinced of its effectiveness in South East Europe. "Bad weather" conditions in the EU cast doubt on its commitment to enlargement, undermining the credibility of the membership incentive that drives rule transfer (Epstein and Sedelmeier, 2008). Moreover, the credibility of the threat that the reward will be withheld if a country fails to comply with the conditions depends on effective enforcement. In the bilateral accession process, rigorous enforcement occurs towards the end-game of accession (Grabbe, 2001; Schimmelfennig, 2005), so the pressure for *pre*-accession countries to adopt EU rules is less compelling. This dual deficit in the credibility of bilateral accession conditionality means that the domestic adaptation costs of adopting EU rules may outweigh the benefits.

The purpose of this article is to show that some of the problems of bilateral conditionality can be mitigated by a multilateral approach. The EU uses multilateral programmes and projects in parallel to the bilateral process, but it places the emphasis firmly on the latter. Critics advocate a more synergistic combination of bilateralism and multilateralism in encouraging compliance with EU rules (Anastasakis and Bechev, 2003; Bechev, 2006). I argue specifically that single sector multilateral institutions can reinforce (pre-)accession conditionality in three ways: by securing third country commitments to EU rule transfer well ahead of accession; by providing more sustained and intensive monitoring than that of the bilateral accession process; and by optimising the interdependence benefits of EU rules.

The research focuses on the energy sector, where the EU has designed an innovatory multilateral institution – the Energy Community – to promote the adoption of EU energy rules amongst the (pre-)accession countries of South East Europe. The Community has attracted a small literature (Renner, 2009; Renner and Trauner, 2009) suggesting that the incentive of EU support for regional integration in particular policy areas can generate rule transfer despite the uncertainty of pre-accession conditionality. This work, however, does not consider Energy Community institutions themselves as an instrument of rule transfer, nor does it provide a systematic analysis of rule transfer outcomes. These are the purposes of the present article.

Whilst the research focuses on the EU, it contributes to wider debates over the impact of multilateral institutions on public policy. It has a particular relevance to debates over the use of conditionality by international financial institutions to make debt relief and other forms of financial assistance contingent upon macro-economic or structural reform in the recipient country. Usually administered bilaterally, the effectiveness of this

type of conditionality has been questioned, and it may be that lessons can be drawn from the EU experience of multilateral institutional reinforcement.

The article begins with a theoretical discussion of how multilateral institutions can impact on the variables determining the effectiveness of accession conditionality as an instrument of rule transfer. Part two outlines the methodology of the research. In part three, I analyse the incentive structure of rule transfer in energy, showing how it varies both cross-nationally and between the sub-sectors electricity and natural gas. Part four identifies the institutional attributes that equip the Energy Community with its capacity for reinforcing incentives for rule transfer. Finally the article turns to transfer outcomes, using cross-national and cross-sectoral analysis to identify the effects of Energy Community institutions on rule transfer outcomes.

### *Multilateral institutions and accession conditionality*

How can multilateral institutional arrangements contribute to the effectiveness of accession conditionality in driving EU rule transfer? In answering the question, it is useful first to understand the variables that determine the effectiveness of rule transfer in the accession process, and the ways in which multilateral institutions might impact upon them. Three sets of variables are identified in the literature: firstly, the credibility of mechanisms for ensuring that (pre-)accession countries meet the conditions that have been set for progression through the successive stages of the accession process: secondly, the credibility of the EU's commitment to the membership promise that serves as the main incentive for rule transfer; and thirdly, the intrinsic benefits of EU rules set against the domestic adaptation costs.

#### *The credibility of enforcement*

Accession conditionality will only be effective if it is backed by a credible threat that the rewards of progression towards EU membership will be withheld in the event of failure to comply with the conditions attached to each successive stage of the (pre-)accession process. Credibility depends on the specificity with which the benchmarks of compliance are defined, the rigour of compliance monitoring, and the robustness of gate-keeping (Schimmelfennig and Sedelmeier, 2004, 664; Grabbe, 2001, 1016). In the bilateral accession process, alignment with the *acquis* is subject to “routinized and well-enforced” conditionality only once candidate status is confirmed, and then in the opening and closure of the individual chapters in the accession treaty (Vachudova, 2005, 126). Multilateral institutions can contribute to the credibility of bilateral accession conditionality by providing a more intensive and sustained monitoring regime, especially if the function is delegated to a permanent secretariat.

They may also be able to mitigate the “implementation deficit” in the accession process. The incentive structure of accession conditionality tends to privilege formal compliance with the EU *acquis* at the expense of the implementation and application of rules (Schimmelfennig and Sedelmeier, 2004, 674; Schimmelfennig, 2008; Lavenex and Schimmelfennig, 2009). Thus, whilst it produces impressive results in terms of the incorporation of EU rules in domestic legislation, implementation tends to lag behind. Multilateral institutions, on the other hand, can extend monitoring to the implementation of domestic legislation, leading to deeper and more sustained compliance.

### *Commitment ahead of accession*

Because accession conditionality relies on the external incentive of EU membership as the driver of rule transfer, its effectiveness varies with the credibility of the EU’s commitment to the “promise” of membership: “nothing short of a credible conditional accession perspective has proven effective” (Schimmelfennig, 2008, 920). Even when the commitment is credible, third country governments may be slow to comply with the conditions, putting off the adoption of EU rules until the endgame of accession treaty negotiations (Grabbe, 2001, 1016; Schimmelfennig, 2005, 18). For pre-accession countries with uncertain membership prospects, accession conditionality may not provide sufficiently compelling incentives for rapid and sustained rule transfer (Epstein and Sedelmeier, 2008, 796).

Multilateral institutions may help to mitigate the credibility deficit by securing commitments to *acquis* alignment on the part of third countries ahead of a credible EU commitment to an accession timetable. To be sure, incentives for third countries to participate in multilateral institutional arrangements are tied to accession incentives. Participation may be stipulated as a formal condition of accession, or may be perceived informally as evidence of preparation for membership, and this incentive will be weaker for those with uncertain accession perspectives. For these countries, however, the cost–benefit calculus will include the risk that *non-participation* will prejudice their accession status.

Governments may, of course, be wary of making institutionalised rule transfer commitments ahead of a credible accession commitment on the part of the EU. They may, however, believe that they can retain control over the institutions and their rule-making activities, or they may simply fail to anticipate the consequences of commitment. The EU itself shows how institutions may evolve in ways that the participants never anticipated, locking them into an increasingly institutionalised and expanding body of rules, and subjecting them to supranational actors that they can control only imperfectly (Pollack, 1996, 29–33; Dimitrakopoulos, 2001; Tallberg, 2002).

Multilateral institutions may be subject to similar processes of informal evolution, progressively subjecting the participants to EU rules that intrude into domestic policy well ahead of the accession endgame.

Multilateral institutions have also been seen by some to generate a distinctive mode of trans-national governance defined by “regular and purposive relations between like government units” within which domestic officials interact with their foreign counterparts, leading to the emergence of policy networks of officials or technical experts sharing common values and beliefs that transcends national interests (Slaughter and Hale, 2010). Examples of this mode of governance are common in the EU itself (Joerges and Neyer, 1997; Lewis, 2003), and may also be expected to emerge in the EU’s external institutional arrangements. From this perspective, the rule capacity of multilateral institutions will depend on two variables: the intensity of interaction; and the ability of national officials to act “without much supervision by ... senior executive branch officials” (Slaughter and Hale, 2010, 358).

#### *Harnessing the interdependence benefits of EU rules*

A third set of variables in the effectiveness of rule transfer relates to the intrinsic benefits of EU rules, set against the adaptation costs of compliance. Third country governments “might consider EU rules as effective solutions to domestic policy challenges, and thus adopt rules independently of EU conditionality” (Schimmelfennig and Sedelmeier, 2004, 662). Conversely, the adaptation costs of compliance with EU rules constitute a disincentive to rule transfer; thus “when the political costs of compliance are high ... even credible membership incentives prove ineffective” (Schimmelfennig, 2008, 919).

In energy, the benefits and costs of EU rules will depend on their impact on the three core objectives of the “new energy paradigm”: security of supply; sustainability; and affordability (Helms, 2007, 9–35). Much of the cost–benefit calculus is common to all the countries in the region. Liberalisation may offer *security of supply* benefits in terms of attracting much-needed private investment to increase capacity. Moreover, EU rules on renewable energy and energy efficiency offer a long-term framework of *sustainability* for the energy intensive economies in the region. The main costs arise from the shift from subsidised to economic tariffs, which makes energy less *affordable*, risking political damage to incumbent governments.

Multilateral institutions may serve to boost the benefits of EU rules by providing the requisite coordination for regional market integration with the attendant security of supply gains. Energy market integration exemplifies the interdependence benefits from participating in a “regime of common interests” with agreed rules to behave jointly and positively for certain purposes and

institutions vested with powers to enforce those rules (Kerremans, 1996). The institutions and rules of such regimes are shaped by “issue structure” defined by the terms interdependence in a particular sector (Keohane and Nye, 1987). The receptiveness of South East European countries to EU market rules will therefore vary depending on their location in the international energy economy between the EU and Russia’s energy “empire” (Correljé and van der Linde, 2006).

### *Methods and data*

The research explores the effects on rule transfer outcomes of the three variables discussed above: the credibility of accession conditionality; cost–benefit calculation; and the reinforcement effects of multilateral institutions. The credibility of conditionality increases with each successive stage in the (pre-)accession process, as a country’s membership perspective becomes clearer, and exposure to compliance monitoring intensifies. It can thus be varied by selecting countries at different locations in the process: an accession country (Croatia); three candidate countries (Macedonia, Montenegro and Serbia); and three countries further down the accession queue (Albania, Bosnia-Herzegovina and UNMIK). A correlation between transfer outcomes and location in the (pre-)accession queue will be indicative of the effects of accession conditionality.

Discrepancies between accession status and rule transfer outcomes may be explained by the second variable: cost–benefit calculation. The benefits and adaptation costs of EU energy rules vary with the structure of the domestic energy sector. A common legacy of Communism means that, for the most part, the energy sectors of South East Europe are similarly structured. They vary, however, in two important respects: the level of development in the natural gas market; and dependence on Russia as the main source of supply. The interdependence benefits of EU rules will vary accordingly, and cross-national comparison therefore focuses on this component in cost–benefit calculation, using natural gas market development, the import ratio and source of supply as the indicators. A correlation between these indicators and rule transfer outcomes will point towards cost–benefit calculation as a factor in rule transfer. The benefits of EU rules will also vary cross-sectorally between electricity, where (as shown later in the article) the potential benefits of market integration around EU rules are relatively compelling, and natural gas where (for some countries at least) they are less persuasive. Cross-sectoral differences in transfer outcomes (stronger outcomes in electricity than gas) are therefore indicative of cost–benefit calculation.

An optimal research design for testing the rule transfer effects of multilateral institutions would be to compare rule transfer outcomes

between countries at a similar stage in the accession process but differentiated between Energy Community members and non-members. Any differences in the pace and extent of rule transfer could then be attributed to the institutional variable. Unfortunately, this strategy is not possible because all the countries in the region are members of the Energy Community. A second-best strategy for capturing the effects of institutional variation on rule transfer outcomes is to compare transfer outcomes at the point of accession between countries – Bulgaria and Romania – that had concluded accession treaties before the Energy Community became operational, with Croatia – that approached accession concurrently with participation in the Community. More advanced rule transfer outcomes in Croatia will thus indicate the reinforcement effect of Community institutions on bilateral conditionality.

Institutional effects on pre-accession countries are more difficult to test. Here the research strategy is to identify rule transfer outcomes that cannot be explained either by the immediate incentives of accession conditionality or by the interdependence benefits of EU rules. Rule transfer in the natural gas sector in pre-accession countries with underdeveloped gas markets and a high level of dependence on Russia as a source of supply will provide evidence of the institutional effects of Energy Community membership.

The research draws on a variety of data sources. The chronology of the (pre-)accession process is compiled from the Commission (DG External Relations) website. Energy import ratios (imports as a percentage of overall consumption) and dependence on Russian gas are calculated from market data drawn from consultants' reports. The motivational effects of accession conditionality and the perceptions of the costs and benefits of EU rules were addressed in interviews with EU, Energy Community and national officials.

The primary purpose of interviews, however, was to evaluate the capacity of Energy Community institutions for generating rule transfer, focusing on the legal status of Treaty commitments, enforcement mechanisms, the rigour of compliance monitoring, and the quality of interaction between national officials. Eighteen semi-structured, face-to-face interviews were conducted with senior officials in the EU Commission, Energy Community Secretariat, stakeholder group, and national ministries and regulatory authorities.<sup>1</sup> Amongst the latter, Romania, Croatia and Serbia selected to represent the 2007 accession, candidate countries, and pre-accession states respectively. Officials were selected from participant lists appended to the minutes of Energy Community meetings. Selection was refined during the research using "snowball sampling" based on reputational information elicited in early interviews.

Rule transfer outcomes were evaluated in terms of *formal rule adoption* (the incorporation of the energy *acquis* in domestic legislation), and *implementation* (the secondary rules and codes required to give effect to the legislation.

The research tracked formal rule adoption via reports published by the Commission and Energy Community Secretariat. Implementation was quantified using an index calculated from Secretariat reports, which evaluate the state of implementation on a scale from 1 (bottlenecks in implementation) to 4 (all measures in place) on eight specific measures of energy sector reform. Scores were averaged to give an index for each country annually from 2006 to 2009.

### *The incentive structure of rule transfer*

The countries of South East Europe have two sets of incentives for adopting the energy acquis; progress towards accession as a “reward” for meeting the conditions of membership, and the intrinsic benefits of adopting EU rules as a framework for managing energy interdependence. This section of the article evaluates the credibility of accession incentives for EU rule adoption, and the terms of energy interdependence between the EU and the countries of South East Europe.

#### *Accession incentives*

As shown in the Introduction, the pace and extent of rule transfer can be expected to vary with the credibility of conditionality at each stage of the accession process. Table 1 shows progression of South East European countries through the key stages in the process, namely:

- opening and conclusion of the Stabilisation and Association Agreements (SAAs) that define relations between the EU and third countries
- confirmation of a county’s status as a candidate for accession
- opening and closure of accession negotiations
- opening and closure of the energy chapter

Credibility varies, firstly, with the commitment of the EU to the “promise” of membership. Bulgaria and Romania were part of eastern enlargement, to which the EU was heavily committed, and their accession in 2007 was only delayed by their tardiness in complying with political conditionality. Croatia’s accession was confirmed in 2011 and has a clear perspective on accession. Macedonia, Montenegro and Serbia were granted candidate status in 2005, 2010 and 2012 respectively, but negotiations have yet to start. For them, and the other countries of the region, the credibility of conditionality is undermined by uncertainty over the EU’s commitment to accession.

A second variable in the credibility of conditionality is the quality of the (pre-)accession process: the specificity with which benchmarks are defined, the rigour of compliance monitoring and the robustness of “gate-keeping” at the milestones between stages in the process. *Pre-accession conditionality*



TABLE 1. Chronology of the (pre-)accession process

	Association Agreements		Accession				
			Candidate status	Negotiations		Energy chapter	
	Negotiations open	Agreement concluded			Opened	Closed	Opened
Bulgaria	1990	1993	1997	2000	2004	2001	2004
Romania	1990	1992	1997	2000	2004	2002	2004
Croatia	2000	2001	2004	2005	2011	2008	2011
Macedonia	2000	2001	2005	–	–	–	–
Montenegro	2005	2007	2010	–	–	–	–
Serbia	2005	2008	2012	–	–	–	–
Albania	2003	2006	–	–	–	–	–
Bosnia-Herzegovina	2005	2008	–	–	–	–	–
UNMIK	–	–	–	–	–	–	–

in energy is relatively low-key. SAAs define the benchmarks of *acquis* alignment only broadly in terms of restructuring energy companies, the improvement of market access and the development of a regulatory framework in line with the *acquis* (Official Journal, 2005). Priorities for domestic reform and the conditions of progression towards accession are defined by European Partnership agreements, but these are similarly sparing in defining specific priorities. Monitoring takes the form of country progress reports, but the energy section of the reports are brief and “broad brush”. *Acquis* conditionality only really begins to “bite” when “potential candidates” are considered for “candidate” status. Consideration is informed by a fairly exhaustive Commission report on the country’s compliance with the specific components of the energy *acquis*. This is followed by a “screening”, which identifies the measures that will be required before opening negotiations on the energy chapter. Before the chapter is closed, the candidate country should have met the full requirements of the energy *acquis*. Conditionality thus becomes more credible as a country nears accession. Even at this crucial stage, however, the credibility of conditionality can be undermined by relaxed gate-keeping. The robustness of gate-keeping between the stages in the (pre-)accession process depends on the priority attached to compliance with the relevant chapter in the *acquis* relative to other chapters. In South East Europe, the EU’s main objectives are promoting democracy, human rights and security. The priority is thus on ensuring compliance with the justice and home affairs chapter of the *acquis*. Energy is a secondary priority, so candidates can progress through the accession process despite incomplete or imperfect compliance with the energy *acquis* (interviews: national ministries; regulatory authorities). The main weakness of accession conditionality in energy,

however, lies in implementation. Conditionality provides credible incentives for candidates to adopt primary legislation incorporating the main elements of the energy *acquis*, but is less credible in incentivising the sustained rule-making activity required to create functioning energy markets. The Commission recognises this and has signalled its intention to include implementation under accession conditionality; “the level of ... implementation ... of the EC *acquis* will be considered decisive in the negotiations for accession” (European Commission, 2011a).

### *Interdependence benefits*

The terms of interdependence between the EU and South East Europe are sharply differentiated between the energy sub-sectors. The electricity sector exhibits a pattern of constructive interdependence. The region is divided between net exporters (Bosnia-Herzegovina, Bulgaria, Romania and Serbia) and net importers. Amongst the latter, import ratios are relatively low; only Montenegro has an import ratio greater than 20 per cent. Virtually all power trade takes place either within the region or with EU member states in Western and Central Europe. Although the volume of intra-regional trade is relatively low, it plays an important role in maximising efficiency and security of supply. Cross-border interconnection constraints, however, mean that intra-regional trade is lower than amongst EU member states, so the countries of South East Europe have strong incentives to increase security of supply by consolidating the regional market (Pöyry/Nord Pool, 2010, 49).

The structure of the natural gas market is more complex and is subject to wide cross-national variation in both market development and resource endowments. Romania and (to a lesser extent) Bulgaria have mature gas markets, whilst Croatia and Serbia are experiencing rapid market growth. Other countries in the region lack a basic transmission and distribution infrastructure, and gas makes a minimal contribution to primary energy supply (Economic Consulting Associates, 2009). As shown in Table 2, only Romania and Croatia have significant domestic resource endowments. All other countries are dependent on imported Russian gas.

All the countries in South East Europe are committed to a strategy of diversification, but are constrained by a transmission infrastructure that reflects their historic status as Russian gas “clients”. Diversification depends on the development of a regional transmission and distribution ring linked to the EU market and connected via the EU’s proposed Nabucco pipeline to Caspian gas sources. The uncertainty of this project, however, means that Russia’s more advanced South Stream remains “the only truly regional pipeline in the Balkans” (Giamouridis and Paleoyannis, 2011, 84). Strategic energy planning thus involves “hedging” between the

TABLE 2. Terms of interdependence in gas and electricity

	Natural gas		Electricity	
	Net import ratio (%)	Market share Russia (%)	Net import ratio (%)	Main source/(destination)
Albania	–	–	10.7	Greece Montenegro
Bosnia-Herzegovina	100.0	100	–11.6	(Croatia Montenegro)
Bulgaria	99.5	100	–16.4	(Greece Serbia Macedonia)
Croatia	41.0	100	19.8	Serbia Hungary Bosnia-Herzegovina
Macedonia	100.0	100	19.7	Bulgaria (Greece)
Montenegro	–	–	30.0	Bosnia-Herzegovina (Albania)
Romania	29.5	100	–6.7	(Serbia)
Serbia	86.0	100	–2.0	Romania (Croatia)

Sources: Economic Consulting Associates (2009); Pöyry/Nord Pool (2010).

EU and Russia and concurrent participation in rival pipeline projects. The ability of countries to play this game successfully depends on geography, geo-politics and the size of the market. Romania is best placed, producing and consuming more natural gas than the rest of the region put together. Bulgaria, Croatia and Serbia are relatively well situated. Whilst contracted to South Stream, they also participate in consortia with upstream gas suppliers in the EU, and have adopted a regional approach to security of supply. Bulgaria has recently concluded pipeline agreements with Turkey, Greece, Romania and Serbia, and Croatia has made supply contracts with German and Italian producers (Giamouridis and Paleoyannis, 2011, 36). National officials in these countries recognise that a common regulatory framework is a prerequisite of a regional market (interviews: national ministries; regulatory authorities). Gas companies in smaller countries with negligible gas markets, on the other hand, find it harder to find commercial partners, so these countries have a less immediate interest in a regional market.

*Institutional attributes of the Energy Community*

The introduction to this article suggested that multilateral institutions reinforce the rule transfer effects of bilateral conditionality in three main ways: eliciting commitments to rule transfer despite uncertain accession prospects; strengthening the credibility of monitoring and enforcement; and changing perceptions of the costs and benefits of EU rules. The capacity of the Energy Community to perform these functions will depend on the particular attributes of its institutional make-up: the legal status of Treaty commitments, the robustness of monitoring and enforcement, and the quality of interaction between national officials. This section of the article

evaluates Community institutions from each of these perspectives, seeking evidence of the emergence of a trans-national governance regime with unanticipated consequences for domestic policy.

*The legal status and enforceability of rules*

The Energy Community is ingeniously designed to bind non-member states to EU law. Its legal base is the Treaty Establishing the Energy Community (TEEnC), an agreement under international law and an integral part of the EC legal system. It commits its members to implementing the EU energy acquis (Directives 2003/54/EC and 2003/55/EC establishing the rules of the internal market in electricity and natural gas, and Regulation 1228/2003/EC on access to cross-border electricity networks), as well as four environmental Directives (in relation to energy), and Directives on the promotion of renewable energy (see Renner, 2009). The TEEnC required participants to adopt the core Directives of the energy acquis within 12 months of it coming into force, with partial market opening by 2012 and full market opening by 2015. For most of the participants, then, the timetable for adopting the acquis is significantly ahead of accession.

The legal status and enforceability of TEEnC commitment remain uncertain. They may be held to be directly effective in conferring rights that can be relied upon in domestic courts, which could refer actions for infraction to the European Court of Justice. Pending such referrals, actions against infractions are dealt with through the disputes settlement procedure, which is conducted by the Community Secretariat. Eight cases have so far been opened under the procedure, four of which were initiated by the Secretariat itself. Although sanctions are relatively blunt, the potential for parallel actions in domestic courts casts at least “a shadow of the law” over TEEnC compliance.

Interview evidence suggests that some of the participants entered into their Treaty commitments without a clear sense of the full legal implications. Treaty negotiations were conducted by senior officials in national ministries “below ministerial radar”, and some governments were not fully aware of the scope of the obligations to which they were signing up.

*Someone in a ministerial meeting said “next May you have to have a fully open market” – and some people were really taken aback because they hadn’t taken it seriously. They said “Good God! Who signed this Treaty? This is terrible” (interview: Council of European Energy Regulators).*

The Treaty thus entailed unanticipated consequences for some of its members, locking them into an expanding body of rules applied by an increasingly assertive Secretariat.

*Monitoring compliance*

Monitoring compliance with the TEEEnC is the function of the Secretariat in its role as “guardian of the treaty” (European Commission, 2011a, 2). Its annual implementation report contains a detailed evaluation of national rules for transposing the relevant EU Directives. It provides “structured assistance” to national ministries at the pre-legislative stage of law-making, issuing comments on draft legislation. Monitoring extends to the implementation of domestic laws, and its templates for the “road maps” that establish implementation requirements are becoming increasingly specific and detailed. Whilst some national officials endorse the Secretariat’s assertiveness, others see it as overly intrusive in “expanding its responsibilities in ways that are not quite in line with the Treaty” and “acting like the Commission” (interviews: national ministries). Overall, then, Energy Community monitoring is much more intensive than that of the bilateral accession process.

The Secretariat is supported by the Commission in its overall “coordination” role, which it performs through chairing or co-chairing EC institutions. Commission activism waned after the launch of the Energy Community, but it has recently signalled an intention to “take the lead” in a number of areas of TEEEnC implementation, supporting the Secretariat in initiating actions under the dispute settlement procedure and offering “specific advice” to the EC members on structural reform.

*Interaction and normative adaptation*

The Energy Community fulfils the central condition of a trans-national governance regime: regular and purposive interaction between national actors. The most intensive interaction takes place in the Regulatory Board (ECRB). Made up of representatives of national regulatory authorities and sub-divided into specialist working groups, the ECRB generates around 20 meetings annually. Participants are in regular contact between meetings, and personal relationships are close. Interviews suggest that regulatory officials constitute an epistemic community based on a common body of professional expertise and a shared commitment to solving the operational problems of regional energy markets. The same is true of the Permanent High Level Group of senior officials in national energy ministries. Most participants have been involved in the Energy Community since its origins, so personal relations are close: “we invite each other home for dinner”. Participants share a common commitment to Energy Community objectives: “people ... understand that they have a political obligation to ensure that commitments are implemented” (interviews: national ministries). By contrast, the Athens and Maribor Forums of stakeholders (industry representatives,

ministry officials, regulators and consumers) are less effective instruments of trans-national governance. A six-monthly schedule of meetings is too infrequent to sustain networks (interviews: national ministries).

Interviews suggest that sustained interaction in the PHLG and ECRB has generated normative adaptation on the part of national officials: “attending the meetings, talking to colleagues – it does change their thinking”. Officials are “extraordinarily open” to learning the requirements of competitive energy markets (interview: European Commission). Part of the interview was designed to map the attitudes of national officials towards two key issues of market liberalisation: the “unbundling” of incumbent utilities to generate competition and the principle of cost reflective retail tariffs. Almost all interviewees recognised the benefits of competition: “we think we should be careful to keep a competitive structure; that’s a principle we believe in” (interview: national ministry). They also recognised the benefits of economic tariffs as a pre-requisite of investment in new capacity, although they were sensitive to the social (and political) costs of price hikes in societies where fuel poverty is widespread. It can be concluded that the Energy Community generates the requisite interaction for the emergence of a trans-national governance regime, and that it has had a positive impact on the way national officials perceive the costs and benefits of EU rules.

It is less clear, however, that it meets the second condition of trans-national governance: the independence of participants from the political executive. Some ministry officials expressed frustration over their exclusion from decisions over the structure of the energy sector, whilst some regulators felt under-empowered in relation to retail tariffs (interviews: national ministries; regulatory authorities). Thus whilst trans-national governance has penetrated national ministries and regulatory authorities, it has had less impact on the core political executive where key decisions are made.

### *Rule transfer outcomes*

How successful have Energy Community institutions been in boosting the rule transfer effects of (pre-)accession conditionality, especially for countries with uncertain membership prospects, and where the cost–benefit calculus of adopting and implementing EU rules is less than wholly compelling. To answer this question, the final part of the article examines rule transfer outcomes in the participant countries, using cross-national and cross-sectoral analysis to identify the added value of Community institutions.

### *Transfer outcomes in accession countries*

The effects of multilateral institutions on rule transfer can be tested by comparing rule transfer outcomes in countries – Bulgaria and Romania – that

TABLE 3. Chronology of formal rule adoption/accession

	EU candidate status	Energy chapter closed	Initial energy law	Revised energy law
Bulgaria	1997	2004	1999	2003; 2007
Romania	1997	2004	1998	2003; 2007
Croatia	2004	2011	2001	2004; 2007; 2010
Macedonia	2005	–	2004	2011
Montenegro	2010	–	2003	2010
Serbia	2012	–	2004	2011
Albania	–	–	2003	2008
Bosnia-Herzegovina	–	–	2002/2005	2009
UNMIK	–	–	2004	2010

Sources: EC Secretariat Country Progress Reports.

closed accession treaties in 2004 before the Energy Community became operational, with a country – Croatia – that approached accession concurrently with participation in the Community. This comparison enables the research to capture the “value” that the multilateral Energy Community adds to the bilateral accession process.

Table 3 shows the timeline of formal rule adoption in relation to confirmation of EU candidate status and the closure of the energy chapter in accession negotiations – milestones in the accession process. A distinction is made between the adoption of basic energy laws that serve as the foundation for a liberalised energy sector, and the subsequent revisions that are required to bring the legislative framework in line with the EU energy *acquis*. The table suggests that bilateral conditionality acted as a driver of formal rule adoption in the 2007 accession countries, and that it was most effective in the “endgame” of the accession process between the confirmation of candidate status and the closure of the energy chapter in the accession treaty. Warned by the Commission in 1999 that they needed to “step-up their legislative efforts” (European Commission, 1999), both Bulgaria and Romania revised their energy laws in 2003 – just ahead of the closure of energy chapter negotiations in 2004 – and again in 2007 coinciding with accession. The case of Bulgaria, however, shows that accession conditionality is not a “failsafe” mechanism of *acquis* compliance. Commission reports on the eve of accession still pointed to “insufficient progress in opening up electricity and gas markets” (European Commission, 2006).

Croatia’s legislative progression towards *acquis* alignment was similarly timed, with three revisions to the energy law between confirmation of its candidate status (2004) and the closure of the energy chapter (2011), spurred by the Commission report of 2007 that alignment with the *acquis* required “sustained efforts in many subsectors of the energy chapter” (European Commission, 2007). By contrast to the “just-in-time” compliance of Romania

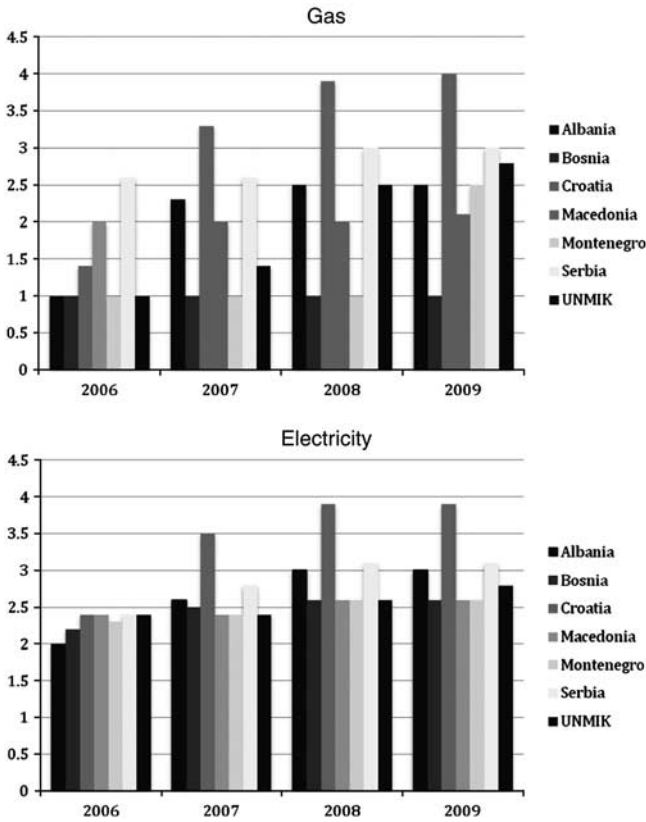


FIGURE 1. *Implementation index gas/electricity*  
 Sources: *Energy Community Secretariat's annual reports.*<sup>2</sup>

and Bulgaria, however, Croatia had achieved a high level of compliance well ahead of confirmation of accession in December 2011 (European Commission, 2010a, 42).

Croatia was also ahead of the 2007 accession countries in terms of the implementation of rules. Figure 1 shows an implementation index for electricity and gas on a scale from 1 to 4, calculated from the Energy Community Secretariat's annual reports.<sup>2</sup> In 2006, the Secretariat's reportage included Bulgaria and Romania, so it provides a basis for comparison with Croatia as it closed in on accession in 2009. On the brink of accession in 2006, Romania stood at 4.0 in electricity but only 3.3 in gas, whilst Bulgaria stood at 3.5 and 3.0 respectively. Croatia was significantly more advanced in implementation. Four years ahead of accession in 2009, it registered 3.9 in electricity and 4.0 in gas. Croatia's relative advancement may be attributed at least in part to Energy Community monitoring, which renders implementation failures more transparent,



allowing the Commission to apply implementation requirements alongside those of formal rule adoption in accession conditionality.

*Transfer outcomes in pre-accession countries*

The reinforcement effects of multilateral institutions on pre-accession conditionality can be tested by cross-national analysis of the chronology of rule transfer in relation to accession status. If rule transfer simply reflects the credibility of accession conditionality, we would expect to find the chronology varying cross-nationally with progression through the (pre-)accession process. More generalised chronological patterns of accelerating rule transfer ahead of progression may indicate the reinforcement of accession incentives by Energy Community institutions.

Table 3 shows a general trend towards formal rule adoption. All the pre-accession countries adopted basic energy laws in the period 2002 to 2005, and all have revised the legislation since 2008. The basic legislation, then, occurred at an early stage in the pre-accession process, and predated the establishment of the Energy Community (although it coincided with the forerunner institutions of the South East Europe Regional Energy Market). A more nuanced, qualitative picture of rule adoption can be drawn from the Commission's country progress reports. These show that the quality of legislation is subject to quite wide cross-national variation but with little relationship to the credibility of a country's accession prospects. Despite not acquiring candidate status until 2012, Serbia is the leader in rule adoption and implementation. The 2010 report describes Serbia as "moderately advanced in the implementation of the ... energy acquis" (European Commission, 2010b, 48) whilst the following year's report notes that "the new Energy Law represents a substantial step towards full transposition of the ... acquis" (European Commission, 2011b, 83). Albania, still not confirmed as a candidate country, is also commended for legislation that is "largely in line with the Energy Community Treaty" and which "transposes a considerable part of the relevant acquis" (European Commission, 2010c, 46). On the other hand, Macedonia, confirmed as a candidate in 2005, was still being flagged in Commission reports as a laggard as late as 2009 (European Commission, 2009, 48). Whilst it was commended for making "good progress" in the 2011 report, this was attributed to action on the part of the Energy Community Secretariat under the dispute settlement procedure (European Commission, 2011c, 48). Another candidate country, Montenegro, was acknowledged to have taken steps towards meeting the requirements of the acquis in 2009 (European Commission, 2009, 51) but castigated for slow progress two years later (European Commission, 2011d, 47).

Figure 1 shows the implementation index reflecting a similar pattern of cross-national variation. All the pre-accession countries lag behind the

fast-track candidate Croatia but, with the exception of Bosnia-Herzegovina, all have made significant progress towards implementing the *acquis*. There is, however, no relationship between implementation and location in the “pre-accession queue”. Serbia is the clear implementation leader followed by Albania and UNMIK, all ahead of Macedonia and Montenegro that received candidate status in 2005 and 2010.

The general trend amongst pre-accession countries with uncertain membership prospects towards the adoption and implementation of EU rules may be taken as evidence of the rule transfer effects of Energy Community participation. Cross-national variation in the pace of rule transfer, however, cannot be explained in these terms, since all the countries were similarly exposed to Community institutions. The research therefore turns for an explanation to the interdependence benefits of EU rules.

#### *Transfer outcomes and interdependence benefits*

The interdependence benefits of EU rules vary between the electricity and natural gas sectors, so their effects can be captured by cross-sectoral comparison. Benefits are more immediate in electricity, where there is strong potential for a regional market; in natural gas, the market logic is less compelling. Rule transfer can therefore be expected to vary between the sectors, with stronger transfer effects in electricity than natural gas. Figure 1 confirms this expectation. In 2006, only Serbia registered above 2.0 on the implementation index whilst all seven countries exceeded this level in electricity. In 2009, a disparity was still evident: all countries exceeded 2.5 on the index in electricity whilst only three did so in natural gas. However, the gap was significantly narrower than it had been at the inception of the Energy Community. Starting from a lower base-line, the rate of increase in the implementation index is higher in natural gas than in electricity. This counter-intuitive finding may point towards the Energy Community as a driver of rule transfer in a sector where the cost–benefit calculation is not very compelling.

Cross-national comparison of the pace of implementation in natural gas provides a more nuanced picture. Croatia’s rapid acceleration reflects the intensification of accession incentives towards the endgame of the accession process, reinforced by a favourable cost–benefit calculus. As shown in the previous section of this article, Croatia has the strategic resource endowments to benefit from a regional gas market linked to that of the EU. Serbia is less favourably endowed, depending heavily on Russian imports, but has ambitions to develop its gas market and pursues a strategy of hedging between EU and Russian sources of supply. Its relative advancement in implementing EU rules can be explained in these terms. For Albania, Montenegro and UNMIK, however, without a significant domestic market

and heavily dependent on Russian gas, the implementation of EU rules is harder to explain in terms of the cost–benefit calculus. Thus, in the absence of credible accession incentives, the advances of these countries between 2006 and 2009 in implementing EU rules provide evidence of the effect of Energy Community participation in reinforcing the weak incentive structure of rule transfer.

### *Conclusions*

The research confirms that, whilst bilateral conditionality is the primary driver of rule transfer in South East Europe, Energy Community institutions exert a significant reinforcement effect. Croatia's advancement in the adoption and implementation of EU rules reflects the effects of the accession process. However, there is also evidence of an institutional effect. Having approached accession under the tutelage of the Energy Community, Croatia is significantly more advanced in implementing EU energy rules than the 2007 accession countries were on the eve of membership. Implementation failures that might have gone under the radar of bilateral conditionality are exposed by the more intensive monitoring of the Energy Community.

For countries with a more uncertain membership perspective, the correlation between rule transfer and pre-accession status is relatively weak. Some of the discrepancies can be explained by the interdependence benefits of EU rules as a platform for regional market integration. Serbia's relative advancement in implementing the *acquis* in natural gas can be attributed to the potential benefits of EU market integration for a country seeking to diversify sources of supply away from Russia. The rule transfer effects of interdependence benefits are also apparent from cross-sectoral comparison. Implementation is more advanced in electricity, where the benefits of a regional market are more immediately attainable, than in natural gas, where regional market integration is a longer-term prospect. Nevertheless, the research shows an acceleration in the implementation of EU rules in natural gas since the establishment of the Energy Community. Progress towards implementation in pre-accession countries lacking a developed gas market points towards the rule transfer effects of multilateral institutions.

This is not to claim that the Energy Community exerts a rule transfer effect *independently* of bilateral pre-accession conditionality. Community institutions operate in tandem with conditionality, locking countries into pre-accession commitments to EU rules and subjecting them to sustained and intensive monitoring. There is evidence that some of the participants entered into Treaty commitments without a clear sense of what they entailed. Although the legal enforceability of the TEEEnC is questionable, compliance is a condition of progression in the accession process, so countries have a strong incentive to fulfil these commitments. There is also

evidence that high-intensity interaction in the trans-national governance regime of the Energy Community has changed national actors' perceptions of the costs and benefits of EU rules. In drafting domestic regulatory rules (though not in more politically sensitive issues of tariff-setting) national officials have some independence from the political executive and can act as "carriers" of EU rules in the domestic arena.

The main lesson of this article for the EU is that, in sectors characterised by interdependence, multilateralism can add value to bilateral accession conditionality. Whilst non-member states cannot be incorporated in the institutional architecture of the EU, the design can be replicated in multi-lateral, meso-level institutions providing "long-term parking" for pre-accession countries pending an upturn in the enlargement climate. The lesson may also be generalisable to other international institutions that employ conditionality to generate structural reform in client countries. Not only can a multilateral approach reinforce the effectiveness of bilateral conditionality, it might also strengthen the legitimacy of an instrument that is frequently seen as an intrusion in the "policy space" of sovereign states.

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### NOTES

1. European Commission (DG Transport and Energy; DG External Relations): Energy Community Secretariat (3): national energy ministries; Croatia (2), Romania (2); Serbia: national regulatory authorities Croatia; Romania (3); Serbia (2): Council of European Energy Regulators: European Federation of Energy Traders.
2. Energy Community Secretariat's annual reports:  
*Facilitating and Implementing the Energy Community Treaty: Report on Compliance with the Gas Benchmarks*, December 2006;  
*Facilitating and Implementing the Energy Community Treaty: Report on Compliance with the Electricity Benchmarks*, December 2006;  
*Implementation of the Treaty (Natural Gas)*, December 2007;  
*Implementation of the Treaty Establishing the Energy Community, Gas*, October 2008;  
*Implementation of the Acquis under the Treaty Establishing the Energy Community, Status of Gas Market Development*, June 2009;  
*Implementation of the Treaty (Electricity)*, October 2007;  
*Implementation of the Treaty Establishing the Energy Community, Title II/Electricity*, December 2008;  
*Implementation of the Energy Community Treaty (Electricity)*, December 2009.

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