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## OXPO Working Paper

### The Limits of Convergence with EU Energy Norms in the Neighbourhood.

EU External Energy Governance and the Borderline Cases Azerbaijan and Algeria.

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#### **Abstract**

The export of EU norms to regulate gas markets and transnational infrastructure has become the *leitmotif* of EU external energy policy in the neighbourhood. This paper compares two borderline cases for EU external energy governance in this regard. It accounts for a varying degree of convergence with EU norms as the result of an unstable, open, and conflictual process. The analytical framework broadens the scope of existing studies on the export of EU norms beyond its borders by factoring in geopolitical and market-based constraints and influences, which often outweigh EU coercion. It is argued that EU external energy governance is more effective, in terms of sustainable convergence, if it is “decentred”.

## Introduction

“Safety and Security lie in variety and variety alone.” (Müller-Kraenner, 2008, 19) After 80 years, Churchill’s principle that energy security requires diversification is still applicable and holds particularly true with regard to Europe’s gas supply security.

EU energy security is confronted with major intertwined challenges, which are a growing European demand and regional competition for finite fossil fuel resources, the depletion of gas and oil reserves within Europe in the mid-term, the combat against climate change, and the need to guarantee affordable and competitive energy prices. The combination of the underlying political, economic and environmental constraints increases the importance of gas supplies from and through the EU’s neighbourhood.<sup>1</sup> At the same time, enduring political uncertainties with regard to the future of Russo-Ukrainian relations and repeated gas conflicts between Europe’s main supplier and the major transit state have revealed the vulnerability of EU gas supply security. Taken together, this underscores the need for more gas import diversification and an effective EU external energy policy in the neighbourhood.

The EU’s strategy to guarantee its energy security in its “near abroad” and reduce risks along the supply chain is twofold. Firstly, the EU seeks to integrate neighbouring countries into a pan-European market for gas, based on convergence with EU key norms, rules and standards (EC, 2011, 6). In this context, the EU has multiplied its bilateral and multilateral instruments to export EU energy norms, in order to liberalise and modernise the energy sectors of its neighbours. The unbundling of gas sectors, i.e. the separation of network operation from production and supply activities, is the linchpin of the EU-envisioned market restructuring. Drawing upon this, EU norms are supposed to stimulate competition and investment of energy companies and depoliticize the energy supply chain, thereby contributing to EU

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<sup>1</sup> The EU’s import dependence on gas is supposed to increase to more than 80% by 2035 (IEA, 2013). Neighbouring suppliers will remain crucial for EU gas supply security despite a growing availability of Liquefied Natural Gas (LNG) from remote suppliers. While imports of LNG from unconventional gas production in North America hold the potential to mitigate the EU’s dependence on gas supplies from its vicinity, more lucrative spot markets in Asia and pending decisions on export licences cast doubts on the viability of this option (Ratner *et al.*, 2013).

supply security (EC, 2008).

The second pillar of the EU's external energy policy in the neighbourhood is the diversification of gas imports and supply routes by strategic projects of "Common European interest", in order to reduce European vulnerability, especially vis-à-vis its major, yet presumably unreliable supplier and transit state (EP, 2009). The EU's strategy goes beyond the rationale of sheer physical diversification in this point. Indeed, the EU seeks to prescribe supplies, volumes and routes and endow import corridors with a common liberal regulatory transit framework along the whole pipeline corridor, based on EU norms such Third Party Access (TPA), market tariff pricing and investment protection (Weber, 2014a).

The underlying *leitmotif* of EU external energy policy in the neighbourhood can be subsumed under the term of "external energy governance", defined as the normative process of exporting energy related, EU-centred norms to third countries by different institutionalized arrangements. Following its diffusionary logic, one can distinguish between two concentric circles of external energy governance that have evolved during the last decade (Padgett, 2011). Both share the same normative "regulatory core": The EU hard law embodied in the *acquis communautaire*, on which the internal market for gas is grounded and which the EU attempts to project beyond its borders in form of legally binding, precise, and enforceable arrangements (Abbott *et al.*, 2000). The "inner circle" is made up by the Energy Community, which extends the entire energy *acquis* to third countries. Initially conceived for candidate countries, the Energy Community has also attracted the three neighbouring countries Ukraine, Moldova and Georgia, which have only a vague membership perspective at best. Based on a multilateral treaty, accession involves the far-reaching adoption of binding and precise EU hard norms, which prescribe the governance of domestic markets and a transit regime for transnational infrastructure connecting to the EU. Norm adoption and implementation is monitored, and can be enforced by centralised institutions (Padgett, 2012). Most neighbouring countries maintain, however, less institutionalised energy relations with the EU, which are based on a differentiated, multi-layered system of bilateral and multilateral agreements. External energy governance in this "outer circle" provides for a more selective approximation with EU norms to regulate parts and specific aspects of the supply chain and separate transnational infrastructure projects. The EU has managed to engage all key transit countries in the Eastern neighbourhood into the inner ring of external energy governance and to export key energy norms to major Southern transit countries within the outer ring (Escribano, 2010). Instead of focussing on cases, which patently display the success of EU external energy governance in terms of norm export (Padgett, 2012; Renner, 2009; Dimitrova and Dragneva,

2009), I examine two cases within the outer circle, in which an successful export of EU energy norms is not likely: the suppliers Azerbaijan and Algeria. Unlike with transit countries, the EU's vital interest in accessing their resources to limit its vulnerability towards Russia and the Eastern Corridor as well as regional competition for their supplies, put the Union at the end of the energy interdependence equation. Furthermore, suppliers have less interest in adopting liberal EU norms, since this affects the dominant role of their state-owned energy companies and loosens the state's control on an economically and politically crucial sector (Perović, 2009). The major question that arises in this context is, whether and how can the EU export its energy norms to gas suppliers in the neighbourhood, which are the "borderline cases" of EU external energy governance?

The objective of this paper is to account for the variance of convergence with EU energy norms over time and across both countries and to thereby contribute to the wider literature on EU norm export in the neighbourhood. By analysing three distinct periods (from 2000 till 2005, from 2006 till 2010, and from 2011 till 2013), characterised by specific economic and political constraints, I seek to shed light on the limits and achievements of EU external energy governance under changing conditions. In the first section, I discuss how to grasp the outcomes of EU external energy governance and argue that a more nuanced concept of convergence is needed, instead of a misleading focus on a "1:1 transfer" of the *acquis*. Based on a critical discussion of major accounts put forward by the literature on Europeanisation and External Governance, the second section explores the role of geopolitical and market-based factors in explaining convergence. Subsequently, the third section analyses the involvement of local public and private actors and the status of neighbouring countries in energy cooperation with the EU in order to explain sustainability of convergence with EU norms. The conclusion summarizes three major findings.

## **I. What kind of convergence with EU energy norms and how to grasp it?**

As in other policy fields, the overarching goal of the EU's external energy governance, is a far-reaching and preferably legally binding export of EU norms (Lavenex, 2011). Ideal typical, neighbours are supposed to firstly select hard EU norms in form of precise rules, directives, laws, and standards, subsequently commit themselves to them formally on the bilateral or multilateral level, before they adopt them without major modification as domestic legislation (Langbein and Wolczuk, 2011). The normative end-point of this EU-prescribed process is the extension of the regulatory scope of specific and binding EU norms to

neighbouring countries, which is supposed to substantially limit the latter's room of manoeuvre and thereby contribute to EU security (Scott, 2011). With regard to Azerbaijan and Algeria, however, EU external energy governance does not result in such a clear-cut extension of legally binding, precise and enforceable EU hard norms.

*The outcomes of external energy governance in Azerbaijan and Algeria*

Contrary to some neighbours, who committed themselves to the Directive 2003/55/EC on unbundling and the Regulation 1775/2005 on TPA<sup>2</sup> per binding treaty and transposed these rules into national law, Azerbaijan and Algeria have not formally adopted EU energy hard law. Yet, the absence of a “1:1 transfer” of the binding, precise and enforceable EU *acquis*, does not mean that EU external energy governance towards both suppliers has not led to any notable outcomes reflecting EU key norms. However, these outcomes are “softer”, as selected and adopted norms are less “legalised”, i.e. legally binding, precise and enforceable than EU hard law (Abbott *et al.*, 2000).

In the second half of the 2000s Azerbaijan subscribed to adopting the Directive 2003/55/EC and Regulation 1775/2005 in a non-binding Memorandum of Understanding (2006), prepared four draft laws for national transposition and supported an Intergovernmental Agreement (IGA) regarding the pipeline project Nabucco (2009)<sup>3</sup>, which provides for partial TPA of Azeri deliveries. Furthermore, the country adopted EU standards for metering and billing and a law to create an independent tariff council as a first step towards “minimal unbundling” in the early 2000s, while a later adopted IGA between Azerbaijan and Turkey (2012) reflects provisions of the Nabucco IGA on investment protection and tariff pricing. Algeria adopted far-reaching law reforms to establish an independent energy regulator and a new investment

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<sup>2</sup> Generally, unbundling aims at ending the exclusive control of major energy producers over transmission networks, which is hindering market access of competitors. Three different models have emerged in the light of member state resistance. “Ownership unbundling” as the most far-reaching and EU-preferred option implies the full separation of generation and transmission activities. If companies control both parts of the supply chain, they have to sell some parts of their assets. The second option foresees that in this case companies would not have to sell their network assets but transfer its management to an Independent System Operator (ISO), in charge of commercial and investment decisions. The third, “minimal unbundling” option enables dominant companies to retain their network assets under mere supervision of an Independent Transmission Operator (ITO) (Escribano, 2010, 214). Third Party Access (TPA) is an extension of the unbundling principle to transnational infrastructure.

<sup>3</sup> The Nabucco pipeline has been the EU's flagship pipeline project within the Southern Gas Corridor to deliver gas from Caspian and Central Asian producers to Europe. Its route, runs along the most vulnerable “South Eastern Achilles' heel” of European gas supply security, through the Balkans up to Austria (Weber, 2014b).

regime in 2005, without explicitly referring to the EU energy *acquis*, but borrowing major contents and underlying principles from it. However, in a move towards re-nationalisation of the Algerian energy sector, most of these laws were revised just one year later, while Azerbaijan neither adopted the provisions of the memorandum, nor the IGA on Nabucco. Nonetheless, compared to the case of Russia, where EU external energy governance patently failed to influence energy regulations (Barbé *et al.*, 2009; Yafimava, 2011), outcomes in Azerbaijan and Algeria do reflect EU energy norms to a limited and varying extent.

### *Grasping the degree and sustainability of convergence with EU energy norms*

The evaluation of EU external policy in terms of norm export has become a central concern in literature. As the European Neighbourhood Policy (ENP) itself, a multitude of studies is still biased by the experience of the enlargement of candidate countries in the 2000s, when the EU was able to export the entire *acquis communautaire* to candidate countries through a “1:1 transfer” (e.g. Mahncke and Gstöhl, 2008; Schimmelfennig *et al.*, 2006). Many authors evaluate the effectiveness of neighbourhood policies by relying on a binary dependent variable that is, the adoption or rejection of an unmodified *acquis* (e.g. Schimmelfennig *et al.*, 2006; Schimmelfennig and Scholtz, 2008; Kratochvil and Lippert, 2008). However, taking the far-reaching, legally binding, precise and enforceable outcomes of the norm transfer during the enlargement process as baseline for the evaluation of neighbourhood policies is misleading, since the EU foreign policy faces a very different and far less promising environment in the neighbourhood than in most candidate countries (Weber, 2012). Firstly, the bargaining power of the EU is much smaller *vis-à-vis* the Eastern and Southern neighbours, since the EU’s main incentive of a credible membership perspective is not at offer (Sasse, 2005). This makes a coercive transfer of the *acquis* less likely. Secondly, the weaker identification of elites with the Union and the lower legitimacy of its constitutive norms result in very different resonance structures for EU policies, rendering voluntary adoption less likely (Bafoil and Weber, 2014). Hence, the EU cannot impose and rely on its pre-defined hard norms to the same degree, as it was the case during accession negotiations under the exceptional circumstances of enlargement. This is why empirically and conceptually it is hardly accurate to speak of “norm transfer” in the context of EU neighbourhood policies (Barbé *et al.*, 2009). Indeed, a comparison with the successful norm transfer during enlargement must fall short, since it establishes too ambitious criteria and expectations for the evaluation of EU norm export in the neighbourhood. Consequently, such

a comparison tends to lead to a negative judgment or even to the negation of any tangible results.

However, EU norm export in the neighbourhood is not a “all-or-nothing process” as different degrees of export are possible, which involve the diffusion of some policy contents and features without “copying” EU norms *sensu stricto* (Dolowitz and March, 2000, 13). In order to grasp this conceptually underexposed “grey zone” between a normative “1:1 transfer” and no norm export at all, one can rely on the concept of “policy convergence”. The notion focuses on the “[...] similarity between one or more characteristics of a certain policy [...]” (Knill, 2005, 768). While taking EU promoted hard norms as point of departure, the concept moves the analytical focus to the actual outcomes of external energy governance. The comparison between both enables students to evaluate the “degree of convergence”, i.e. to which extent outcomes in third countries reflect specific contents, principles, and institutional features of EU energy norms. With regard to the temporality of convergence, one can identify three stages, which are “selection”, “adoption” and “implementation” (Lavenex and Schimmelfennig, 2009, 801). Selection refers to the commitment, which neighbouring actors undertake with regard to EU norms by bilateral and multilateral agreements or unilateral decisions. Adoption relates to the actual transposition of convergence into national legislative acts and policies by domestic actors. Both stages raise the question of the “sustainability” of convergence on the level of outcomes. Convergence with EU norms is considered to be sustainable if selected contents, principles and features translate into legislative action and continue to persist over time. If convergence in agreements stops short of, or is cut back and overthrown once it has reached the stage of adoption, it proves to be unsustainable. As the final stage of implementation involves a multitude of actors and variables on the national and subnational level of third countries (Blum and Schubert, 2009), it is considered as separate question of convergence beyond the scope of this paper.

## **II. Convergence and the limits of EU bargaining power: Factoring in markets and geopolitics**

The export of EU’s norms to regulate markets and infrastructures collides with major interests of both energy suppliers. First and foremost, suppliers are interested in securing demand at the highest possible price (Perović, 2009, 36). Furthermore, the energy sectors of both countries are characterised by a high level of state control along the supply chain and limited competition, which are at the heart of an intransparent system of energy rent distribution



(Overland *et al.*, 2010; Aissaoui, 2001). EU external energy governance on the other side, promotes a comprehensive reform agenda geared towards liberalisation based on three principles: a narrowly defined role of the state as regulator, investment protection and non-discriminatory access and competition along the supply chain. The underlying assumption is that functioning, de-politicised markets are the key to secure uninterrupted and sufficient supplies at the lowest possible price for European consumers (CIEP, 2004). As unbundling, TPA and market pricing aim to benefit EU consumers but negatively affect political elites and national oil and gas companies (NOC) in neighbouring supplier countries, one wonders how convergence with EU energy norms took place despite this mismatch.

*The limits of EU bargaining power and the role of markets and geopolitics*

A major explanation put forward by the literature on Europeanisation and External Governance in order to account for the success or failure of EU norm export is the “power based explanation” (Lavenex and Schimmelfennig, 2009). Grounded in rational institutionalism and derived from the underlying theoretical assumptions of the “logic of consequence” (March and Olsen, 1989), it stipulates that an asymmetrical power in its favour, allows the EU to coerce neighbouring countries to select and adopt its norms (e.g. Barbé *et al.*, 2009; Schimmelfennig, 2012).

According to the logic of consequence, actors choose strategically between available options based on the evaluation of the consequences of their decisions. From this perspective, the degree of convergence with or rejection of EU norms is the result of rational neighbouring actors maximising their net benefits in their relations with the EU. The Union can alter cost/benefit calculations of neighbouring actor by offering credible and tangible incentives (Schimmelfennig and Sedelmeier, 2005).

Yet, unlike with other neighbouring countries, the EU does not hold a superior bargaining power towards both energy-rich suppliers, who find themselves in strong bargaining position. First and foremost, the Union depends to a growing extent on crucial natural gas deliveries from both countries. Azerbaijan and Algeria, however, might reduce the dominant role of the EU in their export portfolio, by delivering more gas to alternative consumers via pipeline or LNG. Furthermore, the major incentive at offer to engage neighbours in a process towards far-reaching convergence, the incremental access to the internal market, is of minor interest for both suppliers. Hydrocarbons make up for more than 90 and 98 per cent respectively of the exports of Azerbaijan and Algeria (EIA, 2013a, 2013b) and do not face significant

obstacles or tariffs when being delivered to the EU. Additionally, their powerful NOCs SOCAR and SONTRACH can already access, operate and invest in the liberalised European energy market. Hence, deprived of major incentives, one expects EU external energy governance to achieve no or only a very minor degree of convergence.

However, cost/benefit calculations of neighbouring actors are more complex and have to be embedded in a broader context. Two points are to be made here. Firstly, neighbouring actors find it difficult to carry out clear-cut cost/benefit assessments with regard to the EU's external energy governance, since EU incentives, their credibility and adoption cost are often imprecise and in flux (Sasse, 2008). Hence, actors might come to an inaccurate assessment of costs and benefits, due to incomplete information and bounded rationality (Dolowitz and March, 2000). The second point relates to the analytical emphasis on EU coercion. While the "power based explanation" highlights the role of EU incentives and bargaining power vis-à-vis neighbouring actors, it understates the role of other external influences that might play a crucial role in their decision-making deliberations. This seems to be particularly relevant for norm export in the field of energy, where cost/benefit assessments of actors are influenced by volatile gas markets and geopolitical constraints (Ortung *et al.*, 2009; Youngs, 2009). International and regional energy markets can favour or disfavour suppliers by increasing or decreasing their financial capacities, resources and the need for Foreign Direct Investment (FDI), which is foremost provided by international oil and gas companies (IOCs). Furthermore, markets shape the economic attractiveness of different available alternatives. Analytically, one can distinguish between "supplier markets", characterised by high prices and demand as well as supply scarcity and "consumer markets", characterised by decreasing prices, limited demand and multiplied supply alternatives. At the same time, regional geopolitics can constrain available alternatives or open up new ones, while geopolitical threats and rivalry put pressure on actors to find means to contain and counterbalance them.

Drawing upon this, it is argued that decision-making deliberations of neighbouring actors with regard to convergence with EU energy norms are less driven by EU incentives than by market-related and geopolitical constraints on the regional and international level. That is not to say that EU incentives are negligible, but to grasp EU coercion as one external influence among others, neighbouring countries as geoeconomic and geopolitical centres of their own are exposed to (Fisher Onar and Nicolaidis, 2003).

Conceptually, the notion of "norm diffusion" captures best the insight that convergence is the result of a norm export process, which is more than a unilateral coercive transfer, involving EU and neighbouring actors (Barbé *et al.*, 2009). As norm transfer, norm diffusion focuses on

policy change as independent variable, e.g. in form of norm selection and adoption, but holds the advantage to consider an array of more comprehensive causal explanations beyond mere EU coercion of neighbouring actors (Börzel and Risse, 2009). Rather than overstating EU agency, it allows for factoring in economic and geopolitical externalities, which influence the diffusion of EU energy norms by manipulating cost/benefit calculations of neighbouring actors (Heinze, 2011). Market externalities and the varying need of neighbouring actors for FDI to achieve their objectives, point to the important role that energy companies play in this context. Being major, economically and financially powerful actors involved in production and transport (Orttung *et al.*, 2009), their actions can influence the diffusion of EU energy norms and further convergence, bypass, or oppose it.

### *Accounting for convergence by factoring in markets and geopolitics*

#### Developing supplier markets

In the early 2000s supplier markets emerged, as the increase in available oil and gas production was exceeded by the growth of European and international demand, which led to a steady, yet limited, increase in European gas prices (IEA, 2013). This market situation contributed to increasing supplier revenues and rendered investment in export capacity more lucrative.

In this context, both countries pursued a strategy to improve gas distribution and increase their gas production as well as their export revenues (Bowden, 2009; Darbouche, 2011a). European destination markets presented themselves as the most profitable ones, due to limited transport costs and the highest regional prices. Furthermore, the two suppliers faced the challenge to satisfy a growing domestic demand and modernise their out-dated domestic gas distribution systems and production facilities. Despite slowly increasing export revenues, financial resources remained limited, which is why Azerbaijan and Algeria featured a need for FDI to achieve their goals. While prospects of high export revenues and the need for investment in the energy sector and transport infrastructure furthered convergence with liberal EU energy norms, trade-related EU incentives and financial support through the TACIS and MEDA programme, played only a minor role in the cost/benefit assessments of neighbouring countries (Darbouche, 2011b; Franke *et al.*, 2010).

In Azerbaijan, which was just about to emerge as a gas producer, decision-makers were largely inexperienced with regulatory questions, which increased their uncertainty regarding

the consequences of convergence with liberal EU norms (Bowden, 2009). In Algeria only a small group of powerful governmental actors under Energy Minister Khleil Chaki was in favour of far-reaching liberalisation to increase supply and revenues (Darbouche, 2008). Until 2005, Azerbaijan selected and adopted EU standards for billing and metering to improve the quality of its distribution network, increased domestic prices to limit demand growth and established an independent tariff council to further investment (Energy Charter Secretariat, 2011). Algeria established an independent energy regulator to unbundle the energy sector and adopted a hydrocarbon law, which provided for more competition and market access. While the outcomes in both countries reflect a notable degree of convergence with technical standards and EU norms on unbundling and market pricing in terms of selection and adoption, convergence was only sustainable in the case of Azerbaijan.

#### Peaking supplier markets and geopolitical pressure in the East

From 2005 to 2010 European prices for imported gas escalated and increased up to 240 per cent (IEA, 2013, 164). This strong upward trend was driven by a steadily growing gas demand, tightening output, and sharpened by repeated Russo-Ukrainian gas crises. The thereof resulting windfall increase in energy revenues provided suppliers with abundant financial resources, which increased their financial autonomy as well as the budget contributions of their NOCs.

These developments enabled Algeria to change its strategy towards a more assertive “resource nationalism” to achieve its goals of domestic gasification, higher production and exports volumes more autonomously (Darbouche, 2011a). While an Independent System Operator remained formally in place, however, with reduced competences, the government revised reform steps towards liberalisation of the upstream sector and more competition, by adopting the amended law 05-07 in 2006. This strategic shift took place due to strong domestic resistance against the revision of SONATRACH’s dominant market power. The underlying rationale of the amendment was to strengthen and internationalise SONATRACH as producer and exporter instead, in order to benefit from a favourable market situation by maximising benefits along the supply chain without losing out on state-controlled energy revenues and strategic control over resources and investment (El-Katiri, 2010). The EU failed to address Algeria’s re-nationalisation of the energy sector. Additional incentives provided by the Union for the Mediterranean, were limited to multilateral projects in renewable energies (Escribano, 2010; Darbouche, 2011b).

Azerbaijan as a comparatively small energy supplier also benefited from increasing energy revenues, yet to a lesser extent. More importantly, the country was exposed to increasing geopolitical pressure from its biggest neighbour. Russia opposed Azerbaijan's role as significant energy exporter vehemently and engaged on different levels to prevent Caspian gas from reaching its markets in Europe. Moscow used its political and military support for the Armenian side in the Nagorno-Karabakh conflict as leverage, sought to purchase large volumes from the Azeri Shah Deniz gas field (SD-II) and increased gas prices for its own exports to Azerbaijan. Furthermore, it signed memoranda with member states and European Energy companies to facilitate the South Stream project, which aimed at making a pipeline project from Azerbaijan to Europe unnecessary (Sartori, 2012; Bowden, 2009). In 2008, the Russian-Georgian War caused further worries about Moscow's willingness to use military means in the region. Confronted with the need to counterbalance Russia's *realpolitik*, Azerbaijani political leaders pursued the strategy to increase energy interdependence with the EU, in order to thereby engage the Union in the region and Azerbaijan's export endeavours. In this context, decision-makers strategically subscribed to specific regulatory EU provisions in the hope to reach a strategic partnership on the implementation of a westbound pipeline and supply security. In 2006, Baku and Brussels signed a memorandum, which stipulated that the neighbouring country would reform energy tariffs, as well as establish an independent energy regulation authority (ISO) and Transmission System Operator (TSO). As the document clearly refers to the adoption of Directive 2003/55/EC and Regulation 1775/2005, it displays a high degree of convergence in terms of rule selection. The same is true for the Intergovernmental Agreement (IGA) on the Nabucco pipeline. The Commission-drafted IGA, provided for TPA concerning 50% of the supply volumes, investment protection and market tariff pricing. It was actively supported by Azerbaijan, although provisions reduced the influence of supplier countries and upstream companies, including SOCAR, along the whole route.

However, convergence failed to translate into adoption. As to the IGA, this was related to setbacks with regard to sourcing, routing and lacking private financing for the EU preferred Nabucco project, while other pipeline projects promoted by major European energy companies seemed economically more feasible without imposing regulatory constraints (Sartori, 2012). Secondly, boosted by accumulated, abundant financial resources, SOCAR's strategic and economic ambitions went beyond its initial role as mere crude exporter by the early 2010s. It became clear, that particularly the far-reaching directive on unbundling would have imposed serious constraints on these ambitions. Additionally, Azerbaijan engaged

Turkey and its state company BOTAS in a geoeconomic energy partnership on common infrastructure and further gas deliveries. This provided the Caucasian producer with alternative, economically booming and normatively undemanding energy partners to facilitate and secure westbound gas exports (Kardas, 2011).

### Developing consumer markets and geopolitical pressure in the South

In the early 2010s, regional gas markets changed in favour of consumers and led to a decrease in energy prices. The major reasons for this shift were the availability of cheap LNG supplies from remote gas producers, favoured by the “shale gas boom” in North America and a decreasing European demand due to economic recession. In this context, energy revenues of suppliers decreased, while infrastructure projects faced economic uncertainty.

In order to overcome the “Nabucco deadlock” caused by supply and financing shortcomings and to pre-empt potential LNG imports from substituting scheduled gas deliveries to Europe, Azerbaijan agreed with Turkey on the Trans Anatolian Pipeline (TANAP), in which the Azerbaijani state company SOCAR took a majority stake. This *fait accompli* made the Eastern part of Nabucco obsolete, put the non-European section of the Southern Gas Corridor under Azerbaijan’s control and left only the final decision on the routing on European territory open. Deprived of attractive incentives to offer, the Commission reacted by dropping its clear preference for Nabucco and its IGA, as neither SOCAR, BOTAS, nor European energy companies involved in the upstream in Azerbaijan, were ready to subscribe to the EU’s restricting TPA provisions along the reconfigured pipeline (Rzayeva, 2013). However, and quite surprisingly so, the TANAP IGA is clearly inspired by the Nabucco IGA. While it does not provide for TPA, provisions reflect EU norms on tariff pricing and investment protection.

It was not before prices slumped and the Arab Spring destabilised the Southern neighbourhood geopolitically that Algeria opened up to energy cooperation with the EU again. In the context of the Arab Spring, public spending increased by 50% (Masetti *et al.*, 2013). Confronted with decreasing production and a booming domestic gas demand, the country needed FDI to untap further, less accessible resources and guarantee sufficient energy revenues. In 2013, the EU and Algeria signed a memorandum (2013) after five years of negotiations. However, not much is left from the initial text, proposed by the Commission, as references to EU norms have vanished and the EU was unable to offer tangible incentives to prevent the document’s erosion in this regard. Yet, some articles on potential liberalisation of

the upstream sector and investment protection hint to possible venues for some convergence with EU norms in support of better access and business conditions for private energy companies.

### **III More sustainability through legitimacy: The decentring of EU external energy governance**

While factoring in geopolitical and market-related influences helps to account for the degree of convergence with EU norms at the stage of selection, it is less convincing in accounting for sustainability or unsustainability of convergence. The highest degree of convergence in terms of selection was achieved in Azerbaijan under high geopolitical pressure, but did not translate into any notable norm adoption and vanished completely from the agenda in the early 2010s, as far as the domestic energy sector is concerned. On the other side, a lower degree of convergence at the initial phase of supplier and consumer markets turned out to be sustainable in the case of Azerbaijan but not in that of Algeria. The explanatory shortcoming of the logic of consequences in this regard, raises the question, if more sociological and constructivist accounts can provide an added value.

#### *The limits of EU legitimacy and the decentring of external energy governance*

Based on the theoretical insight that EU norm export is not only about bargaining, the literature on Europeanisation and External Governance draws on alternative explanations, which focus more on legitimacy. Grounded in sociological institutionalism and derived from the underlying “logic of appropriateness” (March and Olsen, 1989), they assume that actors’ interests are not exogenously given, but vary according to their perceptions of what is appropriate behaviour in specific situations. From this perspective, decision-making deliberations of actors on whether to converge with norms or not depend on the appropriateness they attach to these norms, which is influenced by underlying ideas, identities, and role perceptions.

The EU can influence the decision-making deliberations of neighbouring actors either by socialising them based on continuous interaction and normative suasion (Checkel, 2005), or more indirectly, by serving as model for imitation to address shortcomings of the domestic states quo (Schimmelfennig, 2012; Dolowitz and March, 1996).

Drawing upon this, explanations stipulate that the normative resonance of alternative norms is an important aspect in decision-making deliberations and raise the question whether EU norms, ideas and concepts behind them resonate with those of relevant domestic actors. Furthermore, accounts are concerned with the question of in how far neighbouring actors identify with the EU or alternative norm promoters (Barbé *et al*, 2009; Lavenex and Schimmelfennig, 2009; Finnemore and Sikkink, 1998). Both aspects of legitimacy are arguably not given with regard to both countries. Contrary to neighbours such as Moldova or Georgia, Azerbaijan and Algeria are authoritarian states, where public actors neither subscribe to the constitutive values of the EU, nor strive for EU membership. What is more, EU energy norms, which built upon principles of economic liberalism, cannot be expected to encounter a high degree of domestic resonance in countries, where a comprehensive state involvement in energy affairs is considered to be preferable and foreign energy companies are negatively associated with a colonial legacy, as in the case of Algeria.

A fruitful analytical framework to shed light on other possible aspects of legitimacy is “decentring” (Bechev and Nicolaidis, 2010). Departing from the insight that the underlying “access-convergence logic”, i.e. the bargain of access to the EU’s market and institutions in return for adoption of EU norms is not very conducive in the neighbourhood, it explores ways to delink both. While decentring can mean many things, I focus on three points, which relate to the legitimacy of the process of setting and diffusing norms and the status of neighbouring countries in the institutions of energy cooperation. The underlying assumption is twofold: Firstly, socialisation can lead to outcomes, which reflect a certain degree of convergence with EU energy norms, if the EU allows for more “co-development”, “ownership” and “status” in its external energy governance. Secondly, since neighbouring actors consider a more decentred external energy governance to be more legitimate than the prescriptions of EU hard norms based on an “access-convergence bargain”, convergence is more likely to be sustainable.

The first aspect of decentring can be subsumed under the notion “co-development”. It focuses on the question, in how far energy cooperation draws on shared policy goals and broader contents such as establishing a strategic gas corridor and modernising parts of the supply chain. Hence, it relates to the broader objectives and statements of intension, which denote the direction, which decision-makers wish to take (Dolowitz and March, 2000, 12). “Co-ownership” raises a second aspect of decentring. It is concerned with the degree to which local actors co-own the processes of shaping specific norms and policies as well as the instruments and programmes, by which they are promoted. Instruments like twinings and



networks feature the advantage that they can engage relevant public and private actors to develop and promote shared diagnostics and solutions rather than relying on prescribed EU frames for the transfer of hard norms. While co-development typically involves actors on the decision-making level, co-ownership focuses on experts and bureaucrats on the less politicised, operational level. Furthermore, co-development and co-ownership consider the engagement of relevant private actors in the field of energy. Powerful energy companies have an important say in energy sectors, transnational infrastructure, and their regulation (Orttung *et al.*, 2009). Thirdly, decentring raises the question of the “status” of neighbouring countries in the institutions of energy cooperation. Both suppliers repeatedly claimed a special strategic relationship with the EU for themselves, rather than being just a subsidiary neighbouring country (Darbouche, 2008; Nuriyev, 2008). This points to the fact that status in their relations with the EU matters to neighbouring actors. Strategic partnerships upgrade the status of partner countries and reflect better the underlying interdependence between the Union and its suppliers.

Conceptually, socialisation based on decentring can be integrated in the array of constructivist explanations, which might underlie norm diffusion processes. Contrary to norm transfer, the concept of diffusion neither gives rationalist accounts a pre-dominant role (Börzel and Risse, 2012), nor conceives neighbouring actors as mere objects subjected to EU prescription of pre-defined hard norms (Barbé *et al.*, 2009). Hence, it seems to be better suited to grasp sustainable convergence, in terms of shared and “softer” outcomes, as the result of more horizontal interaction between the EU, neighbouring and relevant economic actors.

#### *Accounting for convergence by analysing the decentring of EU External Energy Governance*

##### Initial decentring towards Azerbaijan and indirect influence on Algeria

The major instrument of EU external energy governance towards Eastern neighbours in the early 2000s was “Interstate Oil and Gas Transportation to Europe” (INOGATE). The EU-funded regional network aimed to initiate functional bi-lateral and regional energy cooperation in order to facilitate and secure gas transport to Europe as well as further convergence of energy markets with EU norms (Energy Charter Secretariat, 2011). Cooperation within the network allowed for co-development, as the ministries of neighbouring countries were able to set priorities together with the EU. In the case of Azerbaijan, cooperation was mainly bilateral and focussed on Azerbaijan’s objective to “gasify” the internal market and improve distribution networks. On the request of

Azerbaijan's Ministry of Industry and Energy, EU experts provided administrative and technical assistance to their counterparts on the operational level. EU standards, norms, and principles of unbundling and market pricing were introduced and discussed during workshops, trainings and projects with regard to their capacity to overcome the structural problems of Azerbaijan's distribution network and a lack of investment. This co-owned process provided EU experts with a continuous opportunity for normative suasion of Azerbaijani public actors. Since the latter lacked experience with regard to gas regulations, EU actors were able to shape the framing of identified problems and the envisioned solutions, based on their advanced knowledge and regulatory expertise. Hence, the achieved, notable degree of convergence in terms of rules selection was based on socialisation on the operational level and supported on the political level. As Azerbaijani public actors considered some degree of unbundling and market pricing as well as more technical EU standards to be appropriate, convergence proved to be sustainable.

EU external energy governance towards Algeria was embedded in the overarching Euro-Mediterranean Partnership (EMP). Functional, project-oriented instruments such, as the multilateral Euro-Mediterranean Energy Forum provided for co-development, yet political rivalries between Southern neighbours prevented Algerian actors from engaging (e.g. Darbouche, 2011b). However, selected and adopted norms regarding the establishment of an independent energy regulator and the liberalisation of the upstream sector, clearly reflected EU norms. These outcomes were not the result of socialisation favoured by co-development and co-ownership, but based on voluntary imitation of EU rules. Indeed, the Ministry of Energy under Khleil Chakib introduced a far-reaching liberalisation agenda independently from EU instruments, in order to increase production and improve distribution through FDI (Darbouche, 2011a). On the operational level, EU norms were evaluated by Algerian experts and served as established models for the modernisation of the Algerian energy sector. However, the adopted liberalisation norms were fiercely contested by a number of national actors and SONATRACH in particular. The debate focussed on the NOC as symbol of Algeria's independence, whose dominant position along the supply chain was not to be jeopardised in favour of foreign companies (Darbouche, 2008). Eventually, liberalisation was revised as resistance grew and Chakib had to resign. As the EU failed to engage local actors on the operational and political level, it was more of a spectator than actor in this process.

#### Counterproductive EU-centred prescriptions

In the light of high geopolitical pressure in the late 2000s, the EU managed to include precise EU provisions on unbundling, market pricing and TPA in the bilateral memorandum with Azerbaijan and the IGA on Nabucco. However, Azerbaijani decision-makers were never convinced of the appropriateness of the pre-defined, unilaterally prescribed norms, which would have imposed high costs and a loss of control. As Azerbaijan managed to counterbalance Russia's geopolitical pressure through leaning more against Turkey and BOTAS, convergence with EU norms stalled. EU experts continued to cooperate with Azerbaijani experts on the operational level within a twinning project on legal approximation and structural reform of the energy sector (Sandtner, 2009). The co-owned cooperation therein, enabled EU experts to bring in their expertise and knowledge and to persuade Azerbaijani ministerial officials of the need for more market pricing and unbundling. Together, the experts jointly carved out draft laws reflecting EU norms in these points, but they hit political sands on the decision-making level, where priority was given to the implementation of the Southern Gas Corridor. However, the more it became clear in the late 2000s, that the EU and the Nabucco Consortium were not able to implement the frontrunner project, but continued nonetheless to give priority to the overambitious pipeline, while ignoring more feasible projects, the more convergence vanished from the Euro-Azerbaijani energy agenda.

With regard to Algeria, EU external energy governance faced a “deadlock”. Algeria repeatedly rejected the whole edifice of EU energy norms and the “access-convergence logic” (Youngs, 2009, 9). In the light of the Russo-Ukrainian crisis in 2006, Algeria reached out to the EU in order to put energy cooperation on a new basis of a strategic partnership, focussing on more pragmatic, bilateral cooperation on infrastructure. However, the Commission's draft proposal for such a partnership did not deviate from its regulatory convergence approach, while in the eyes of Algerian actors, the unilaterally promoted EU hard norms had completely lost their legitimacy in the light of the failed liberalisation (Darbouche, 2008). Facilitated by increasing revenues, Algeria continued to pursue additional production and pipeline projects alone or in cooperation with European energy companies, which had no interest in including TPA provisions in bilateral IGAs.

#### Recent decentring towards both strategic partners

As the Commission dropped its clear preference for the Nabucco pipeline in the early 2010s in the light of the resistance from Azerbaijan and European companies involved in the SD-2

gas production, external energy governance became more decentred in this point. President Barroso and Aliyev (2011) signed a new memorandum on a strategic energy partnership in 2011. It singled Azerbaijan out, as the strategic key partner in the Southern Corridor, delinked the cooperation on infrastructure from stalling convergence in the energy sector and provided for more co-development with Azerbaijani decision-makers and private European energy companies with regard to the final decisions on the routing, capacity, and specifications of the different parts of the corridor. In this context, the Commission ceded to insist on rigid TPA provisions of the obsolete Nabucco IGA, but started to openly discuss the regulation of TANAP and the European section with experts from all involved companies and Azerbaijan as major partner on the operational level. While, the final shape of the corridor clearly differs from the one initially foreseen by the Commission, its regulation still reflects some limited convergence with EU norms, despite the lack of TPA provisions. Indeed, the drafters of the Nabucco IGA managed to persuade public and private actors of the appropriateness of the EU's principle ideas on tariff pricing and investment protection, which were eventually integrated and adopted in the TANAP IGA (Weber, 2014b).

In 2013 the Commission also singled out Algeria as a strategic partner, by signing a memorandum on a strategic partnership. It prepares the ground for more co-development as it focuses on European investment in the upstream sector and the development of shale gas, but refrains from referencing repeatedly refused EU hard norms. The major issues of the agreement are key for Algeria in order to address its supply and production challenges ahead. Furthermore, the memorandum foresees the accession of the Algerian energy regulator to the Agency for the Cooperation of Energy Regulators (ACER), a EU financed expert network on the operational level. This could depoliticise energy cooperation and enable for more co-ownership, with regard to the regulation of upstream and transmission. Whether this move towards a more decentred EU external energy governance will lead to more and sustainable convergence in Algeria, remains to be seen.

## **Conclusion**

The analysis of the borderline cases Azerbaijan and Algeria displays the limits of EU external energy governance to export EU energy norms to third countries in order to regulate their gas markets and shared transnational infrastructure. Furthermore, it points out the shortcomings of over-simplistic concepts to grasp convergence with EU energy norms as well as the limits of major explanations in literature to account for it. Taken together, three points can be

emphasized.

Firstly, the EU's vision of extending the scope of the binding energy *acquis* to all neighbouring countries by fully integrating them in a EU-centred, pan-European energy market for gas is not a realistic one. While EU hard norms mismatch with supplier interests and do not encounter a favourable domestic resonance in both countries, the EU does not hold a superior bargaining power to coerce its energy-rich neighbours. Hence, an over-ambitious "1:1 transfer" of EU norms is misleading. Indeed, the empirical picture in the two supplier countries is more nuanced and discloses variance of convergence with EU energy norms in terms of both, the degree of convergence and its sustainability.

Secondly, explanations focussing on EU bargaining power are of limited help to account for convergence in the field of energy, as they highlight the role of EU coercion and tend to understate the relevance of other external influences for cost/benefit calculations of neighbouring actors; namely gas markets and geopolitics. The latter drive decision-making deliberations of neighbours with regard to EU energy norms more than EU incentives do. While factoring in markets and geopolitics helps to account for a high degree of convergence in Azerbaijan and rejection of EU norms in Algeria in the late 2000s as well as for a limited degree of convergence during periods of shifting markets in the early 2000s and 2010s, it cannot explain the sustainability of convergence.

Thirdly, despite volatile markets and geopolitics, EU external energy governance can achieve sustainable convergence, if it refrains from prescribing pre-defined EU hard norms and relying on the access-convergence logic, but allows for more decentring instead. Allowing for more co-development and co-ownership with neighbouring actors and rewarding them an upgraded partnership status can increase the otherwise limited legitimacy of the process of norm export. In order for EU external energy governance to be effective in ensuring sustainable convergence, public neighbouring actors on the decision-making and operational level need to be engaged, while the involvement of energy companies is further necessary with regard to the regulation of transnational infrastructure.

While the decentring of external energy governance seems to be the only way to ensure a certain degree of convergence with EU energy norms in Azerbaijan and Algeria, the persisting geopolitical and economic conflicts between Russia and Ukraine render it strategically indispensable to ensure EU gas supply security.

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