"Market Power Europe": Patterns of limited energy *acquis* externalization in Switzerland and Ukraine

Leiden University - spring semester 2017

MA International Relations, track European Union Studies

Master Thesis

Supervisor: Dr. Eugenio Cusumano

Second reader: Prof. Dr. Jan Rood

03.07.2017

Name:	Moritz Fegert
E-mail:	f_moritz@hotmail.com
Student number:	s1915517

Word Count: 16,139

Abstract

This thesis assesses whether the EU is as a market power shaping third countries' legislation and policies as asserted by "Market Power Europe", a theoretical framework, which has been insufficiently explored in the literature so far. More concretely it is scrutinised if electricity market liberalisation and emissions trading *acquis* has been externalised to Switzerland and Ukraine. First, it is shown that there is market power potential in the field of energy, as the European regulatory order was increasingly strengthened since the mid-1990s and gave birth to two significant markets for electricity and carbon emissions trade. Second, it is demonstrated that even though *acquis* externalization occurred to a certain extent in both cases, four intervening variables filtered the EU's market power. Indeed, market interconnectedness, political culture, the nature of the political system and the level of institutionalization of the EU's relations with a third country need to be taken into account when assessing the EU's market power in a given third country. These findings are not only theoretically relevant, they also suggest that the EU should concentrate on the development of its Single Market and regulatory order as well as on solid institutional framework conditions to cement its power towards third countries and enlarge its global influence.

Contents

List of tables

1. Introduction

With the completion of the Single Market and the signature of the Maastricht Treaty in 1992, the European Union (EU) emerged as a powerful actor within Europe and towards its neighbourhood. Indeed, from 1992 onwards, the EU became an increasingly important player on the international stage as it endowed itself with a Common Foreign and Security Policy and extended its competences towards non-trade areas.[1] Internally, the EU consolidated its Single Market throughout the various reform Treaties that followed the Maastricht Treaty (Amsterdam, Nice, Lisbon) by giving birth to an ever more complete institutional and regulatory framework. Externally, the EU also increasingly institutionalised its relationship with third countries from its neighbourhood through various forms of cooperation (European Neighbourhood Policy, European Economic Area and bilateral agreements).

As a result of this process of consolidation and with the gain of importance of the EU on the international stage, scholarly contributions about the nature of the EU's power and the shaping impact it has on third countries' policies and legislation have multiplied significantly from the 2000s on.[2] While for a long time the debate concerning the nature of the EU's power has been concentrated around its normative identity[3], it turned towards the EU's economic strength more recently. Indeed, with its conceptual framework "Market Power Europe" (MPE), the scholar Damro gave the internal process of Single Market consolidation and regulation an external policy dimension.[4] According to MPE, the EU is a market power that, intentionally or unintentionally, externalises its own market-related policies and regulations to third countries.[5] As the EU is traditionally portrayed as a weak actor on the international stage, whose agenda is driven by a few powerful Member States, the theoretical framework set up by Damro presents an interesting alternative angle for the

---

[1] Desmond Dinan (2014), *Europe Recast: A History of European Union,* Hampshire: Palgrave Macmillan, 238-241 & 283-293.

[2] Chad Damro (2015), "Market power Europe: exploring a dynamic conceptual framework", *Journal of European Public Policy, 22*(9), 1337-1339; Frank Schimmelfennig (2015), "Europeanization beyond Europe", *Living Reviews in European Governance, 10*(1), 5-6. See chapter three for a more detailed analysis of the literature.

[3] Jan Manners (2002), "Normative Power Europe: A Contradiction in Terms?, *JCMS, 40*(2), 235-258.

[4] Chad Damro (2012), "Market power Europe", *Journal of European Public Policy, 19*(5), 682-699.

[5] Ibid.

assessment of the EU's genuine influence on third countries' legislative and regulatory order. While the literature has demonstrated that this influence is substantial in the case of countries having a credible membership perspective[6], this is less clear for those having no membership perspective in the near future.

The assertion that the EU's power lies within its Single Market is supported when one assesses the importance of this market for third countries. Regarding the trade of goods for instance, the Single Market remains the most tangible proof of the EU's international economic relevance and power, as in comparison to foreign markets it is nowadays a leading force. Indeed, in terms of GDP, the EU is the first economic power as it accounted for 23.8% of the world GDP in 2014.[7] Moreover, the EU market comprises more than 508 million consumers.[8]

Nevertheless, this focus on trade in goods neglects the fact that in other non-trade areas such as energy policy, the Single Market project was also increasingly pursued since the mid-1990s. Indeed, the goal to form a common European energy market started to be transposed into legislation from 1996 on with the first energy package. Additionally, the goal of carbon emissions reduction emerged as another central goal of EU energy policy in the late 1990s. The latter was also to be addressed through a market-based policy: the trade of carbon emissions allowances caped at a pre-defined target-level within a single European market, namely the EU Emission Trading System (ETS), which started to function in 2005. Therefore the EU could potentially be considered as a market power in the field of energy according to MPE

Nonetheless, regarding this field MPE lacks comprehensive theoretical testing. This thesis therefore, seeks to answer the following question: Is the EU a market power towards third countries, which have no membership perspective in the near future, in the area of energy policy?

By raising this question, the aim is to explore the strength of the MPE concept in non-trade areas and to make the theory more resilient to analytical failure in upcoming studies by exploring the variables that might interfere with the theory's expectations. In order to obtain a comprehensive answer, MPE will be asserted through two case studies: Switzerland, a most-likely, and Ukraine, a least-likely case.

---

[6] Ulrich Sedelmeier (2011), "Europeanisation in new member and candidate states", *Living Reviews in European Governance, 6*(1), 31.

[7] Eurostat (2016), "The EU in the World: 2016 Edition", Luxembourg, *Publication Office of the European* Union, 79.

[8] Figures from 2015. In ibid., 22.

The timeframe of the thesis will go from the mid-1990s, marking the beginning of energy-policy making at the EU level, until May 2017 as energy policy developments have been taking place until then both in Switzerland and Ukraine.

The main argument of this thesis is that the EU is a constrained market power in the area of energy policy, as several factors have been affecting its ability to externalise energy *acquis*[9] in Switzerland and Ukraine. As a result, it is argued that four intervening variables should be added to MPE in order to strengthen it for future research: market interconnectedness, political culture, the nature of the domestic political system and the level of institutionalisation of a country's bilateral relations with the EU.

To begin with, the theoretical framework and research design of the study are laid down in the second chapter. Further, the literature is reviewed in chapter three by highlighting the existing gap in terms of empirical research within the debate around the nature of the EU's power and by linking this debate to the "Europeanization beyond Europe"[10] literature, which can contribute to reinforce MPE. Subsequently, chapter four outlines the set up and current state of EU energy policy, more precisely concerning electricity market integration and the EU ETS. The fifth and sixth chapter then present the empirical findings of energy *acquis* externalization in Switzerland and Ukraine. For Switzerland it is shown that although *acquis* approximation was high on the agenda since the mid-1990s, the EU's regulatory order has been finally only partially implemented so far. In the Ukrainian case, it is observed that *acquis* externalization only began very recently although the country committed to it rhetorically since the mid-2000s already. In chapter seven, these findings are then analysed and the theoretical implications for MPE drawn by asserting the existence four domestic and structural intervening variables filtering the theory's analytical strength. Finally, policy recommendations for the EU regarding the exercise of its market power in general and the on-going "Brexit" negotiations are made in the conclusion.

[9] The *acquis communautaire*, or *acquis,* contains all rights and obligations that are legally binding for all EU Member States. In European Commission, *Acquis*, 06.12.16, available online: http://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/acquis_en, consulted the 15.12.16.

[10] Schimmelfennig (2015), "Europeanization beyond Europe", 5.

2. Theoretical Framework, Research Design and Methodology

The conceptual framework formulated by Damro through MPE is central to this thesis. MPE is formed by three main characteristics: the relative market size, the regulatory capacity and the results of interest contestation taking place within the EU regarding *acquis* externalization to third countries. If market size and regulatory capacity are substantial and interest groups in favour of *acquis* export are able to shape the political process, *acquis* externalization is expected to occur.

Regarding the above-presented conceptual framework, the aim of this thesis is threefold. First, the analysis will try to assess whether EU market-related policies and regulations have successfully been externalised to Switzerland and Ukraine. If this is the case, it can be asserted that the EU is a regional, perhaps global market power, not only regarding trade issues, but also within non-trade policy areas such as energy policy. A second goal of this study is to assess whether MPE is well suited for non-trade areas, a point left open by Damro who claims that whereas "evidence of MPE abounds in trade policy, further analyses should include all of the EU's market-related policies and regulatory measures"[11]. Last but not least, an third objective of this thesis is to explore whether intervening variables should be added to MPE, in order to provide the theory with a more comprehensive and solid analytical framework.

These three goals also explain the choice made with regards to the policy area analysed and the case selection. To begin with, the field of energy policy, more precisely the EU-wide electricity market integration and the EU ETS have been selected, as they constitute non-trade policies that are market-related and have not yet been assessed throughout the lens of MPE. Subsequently, the case studies selected, namely Switzerland and Ukraine, present on the one hand a most-likely case (Switzerland) and on the other hand a least-likely case (Ukraine). Indeed, due to its geographical position, Switzerland is an important regional actor in European electricity transit and cross-border trade.[12] Moreover, the Swiss economy is highly interconnected to the European Single Market as the latter accounts for 54% of its

[11] Chad Damro (2012), "Market power Europe", 696.

[12] International Energy Agency (IEA) (2012), "Energy Policies of IEA Countries: Switzerland 2012 Review", *OECD/IEA*, Paris: *IEA Publications,* 91.

exports and 72% of its imports.[13] The externalization of EU energy market-related policies to Switzerland is therefore expected. Conversely, this is less likely in Ukraine, due to its geographic position at the Eastern border of the EU and its energy dependency on fossil fuels coming from or transiting through its powerful Russian neighbour, which reduces the likelihood of pro-EU policies in Ukraine as a negative reaction from Russia could potentially challenge domestic security of supply.[14] Indeed, it is estimated that in 2005 Russia was by far the main country of origin or transit for Ukraine's fossil fuels accounting for 85% of the country's oil, about 75% of its gas and all of its nuclear fuel imports.[15] Moreover, the presence of influential interest groups, which are opposed to market integration in the field of energy in Ukraine, notably in the steel sector relying on non-competitive electricity prices, is also reducing the likelihood of EU energy *acquis* approximation.[16] The choice of a most-likely and a least-likely case is motivated by the fact that in case of absence of *acquis* externalization in Switzerland, the theory would be highly discredited, while clear *acquis* approximation in Ukraine, would strengthen it.

The independent variables are the afore-mentioned three characteristics of MPE and the dependent variable is the externalization of the relevant *acquis*, *id est* market-related policies and regulations governing the European electricity and carbon emission markets. Four intervening variables are suggested in order to reinforce MPE. As it will be seen in chapter three, two of these variables, *id est* market interconnectedness and political culture, have already been discussed by the literature on "Europeanization beyond Europe". The third and fourth variables that could be identified are the nature of the domestic political system and the level of institutionalization of the EU's relations with a given third country.

This qualitative research study will follow the method of process tracing because it makes it possible to follow each step of the causal process from the adoption of EU policies to their potential approximation in Swiss and Ukrainian legislation respectively. The empirical data used will be constituted of reports from

[13] Federal Department of Foreign Affairs - Directorate for European Affairs (2017), "Politique européenne de la Suisse", https://www.eda.admin.ch/content/dam/dea/fr/documents/folien/Folien-Europapolitik_fr.pdf, consulted online on 03.06.2017.
[14] International Energy Agency (IEA) (2006), "Ukraine: Energy Policy Review 2006", *OECD/IEA*, Paris: *IEA Publications*, 31.
[15] Ibid.
[16] Stephan Hofer (2008), *Die Europäische Union als Regelexporteur: Die Europäisierung der Energiepolitik in Bulgarien, Serbien und der Ukraine*, Baden-Baden: Nomos, 155-156.

the International Energy Agency (IEA) and the Energy Community, official documents and energy legislation from the EU, Switzerland and Ukraine, international treaties and agreements, declarations from stakeholders from the private sector and the civil society as well as secondary literature. Finally the timespan of the analysis will go from the mid-1990s, marking the starting point of energy policy-making at the EU level, to May 2017, given the fact that relevant political and legislative activity took place until then in Switzerland and Ukraine.

3. Literature review

Two main theoretical approaches have looked into the EU's ability to influence third countries' legislation and to act as an influential actor within the international system: the literature discussing the nature of the EU's power and the literature on '"Europeanization beyond Europe". The former has already been debating the nature of the EU's power on the world stage since the early 1970s. The latter emerged much more recently, in the mid-2000s, as an extension of studies concentrating on the effects that European integration has on the Member States' internal policies, by widening the scope of analysis to the EU's neighbourhood.[17] Both debates are relevant for our study, as they analyse the EU's role as a rule exporter in third countries.

To begin with, the debate on the nature of the EU as an international actor started with the assertion of Duchêne that the EU should be characterised as a "civilian power" lacking military power and possessing essentially economic power.[18] Subsequently, Manners considerably shaped the power debate by asserting that the EU's power is not defined by "what it does or what it says, but what it is"[19]. Indeed, through his concept of "Normative Power Europe" based on empirical findings of the EU's promotion of the death penalty on the international stage, Manners portrayed the EU as an actor shaping third countries' and international organizations' norms. As a reaction to this emphasis on norms regarding the role of the EU as a global power, some scholars started to focus on the economic clout of the EU, notably by including the European Single Market into the equation. To start with, Meunier and Nicolaïdis defined the EU as a "power through trade" by showing how the EU has been increasingly using access to its internal market to influence legislation and policies in third countries.[20] This marks an important step towards the establishment of MPE, which is central to this study. Further, Bach & Newman argued that the Single Market alone is not a sufficient explanatory variable of the EU's power.[21] Indeed, they

[17] Schimmelfennig (2015), "Europeanization beyond Europe", 5.

[18] François Duchêne (1973), "The European Community and the Uncertainties of Interdependence". In M. Kohnstamm & W. Hager (Eds.), *A Nation Writ Large? Foreign-Policy Problems before the European Community*. London: Macmillan, 19-20.

[19] Manners (2002), "Normative Power Europe", 252.

[20] Sophie Meunier & Kalypso Nicolaïdis (2006), "The European Union as a conflicted trade power", *Journal of European Public Policy, 13*(6), 907.

[21] David Bach & Abraham L. Newman (2007), "The European regulatory state and global public policy: micro-institutions, macro-influence", *Journal of European Public Policy", 14*(6), 827-846.

asserted that through the set up of a "regulatory state"[22], the EU has been able to expand its influence on global markets. In the same vein, Bradford formulated the concept of the "Brussels effect" by stating that the EU is unilaterally setting regulatory standards thanks to the size of the Single Market, the regulatory capacity and the institutional strength of the EU to enforce its regulations.[23] This last contribution brings us closer to MPE that was developed by Damro, who designed an interesting synthesis of the above-discussed theoretical developments. Indeed, he defined the EU as a market power whose ability to externalise market-related policies and regulations in third countries is determined by the relative size of the Single Market, the regulatory capacity of the EU as well as by the result of interest contestation between interest groups active within the European political arena.[24] So far, MPE has only been tested within the field of trade policy by Dahl Kelstrup, who stressed the importance of intervening factors, such as the position of other international organizations and the EU's ability to remain united towards third states in trade-related negotiations or policy areas.[25] Nevertheless, as Damro himself asserts it, the MPE concept "may cover all areas related to market regulation"[26]. As there is currently a lack of contributions testing empirically the concept in non-trade related areas such as energy policy, my thesis is filling this cap.

Additionally, the "Europeanization beyond Europe" literature provides useful analytical tools, which can strengthen and improve MPE, but also possesses certain shortcomings, which this thesis aims to address. To start with, this literature emerged out of a corpus of contributions that focused first on the EU's shaping nature within Member States and later on within candidate countries.[27] Further, the literature expanded its scope beyond candidate countries by researching the determinant factors enabling effective EU-rule transfer in these countries. Through the analysis of case studies in the Eastern neighborhood, the literature has highlighted multiple variables, which are close to the characteristics brought up by MPE. Indeed, scholars have

[22] Ibid., 828.
[23] Anu Bradford (2012), "The Brussels Effect", *Northwestern University Law Review, 107*(1), 1-68.
[24] Damro (2012), "Market power Europe", 682-699
[25] Jesper Dahl Kelstrup (2015), "Market Power Europe - A Constructive Critique", *International Journal of Public Administration, 38*(12), 895-901.
[26] Damro (2012), "Market power Europe", 696.
[27] Schimmelfennig (2015), "Europeanization beyond Europe", 5-6.

identified the importance of the Single Market and potential economic gains[28], as well as regulatory capacity of the EU[29], as important factors for effective EU-rule transfer. However, MPE as such has never been fully empirically tested by this literature.

A major contribution of the literature on "Europeanization beyond Europe" was the argument of Schimmelfennig & Sedelmeier, who analysed the effectiveness of EU rule transfer in the context of the accession process of Central and Eastern European Countries (CEEC) and concluded that accession conditionality is an extremely effective tool regarding the externalization of EU *acquis.*[30] They argued that the so-called "logic of appropriateness"[31], *id est* the similarity between domestic and EU norms, was not determinant for the effective externalization of EU regulations. However, by identifying domestic political culture as an intervening variable to MPE, I argue that the level of similarity between domestic and EU norms matters as it filters the EU's market power, thus *acquis* approximation in third countries.

Another interesting variable, which has been proposed in this literature as influencing the outcome of EU rule transfer, is the level of interconnectedness of a given third country with the EU market. Indeed, in their case study on Ukraine, Dimitrova & Dragneva argued that schemes of interdependences with Russia, and the lack of these with the EU, in the field of energy restrained effective regulatory approximation to EU *acquis*.[32] Last but not least, Schimmelfennig asserted in its literature review on "Europeanization beyond Europe" that for the Eastern neighborhood, the effective externalization of EU regulations depends also on the

---

[28] Stephan Hofer (2008), *Die Europäische Union als Regelexporteur,* 1-206; Heiko Prange-Gstöhl (2009), "Enlarging the EU's internal energy market: Why would third countries accept EU rule export?", *Energy Policy, 37*, 5296-5303; Sandra Lavenex (2014), "The power of functionalist extension: how EU rules travel", *Journal of European Public Policy, 21*(6), 885-903.

[29] Sandra Lavenex & Frank Schimmelfennig (2009), "EU rules beyond EU borders: theorizing external governance in European politics", *Journal of European Policy, 16(*6), 791-812; Lavenex (2014), "The power of functionalist extension", 885-903; Frank Schimmelfennig (2015), "Europeanization beyond Europe", 1-34.

[30] Frank Schimmelfennig & Ulrich Sedelmeier (Eds.) (2005), *The Europeanization of Central and Eastern* Europe, Ithaca, NY: Cornell University Press, 1-256.

[31] James G. March & Johan P. Olsen (1989), *Rediscovering Institutions: The Organizational Basis of Politics*, New York: Free Press, 160-162.

[32] Antoaneta Dimitrova & Rilka Dragneva (2009), "Constraining external governance: interdependence with Russia and the CIS as limits to the EU's rule transfer in Ukraine", *Journal of European Public Policy, 16*(6), 853-872.

dependency on the EU in a given policy area.[33] By proposing the level of market interconnectedness with a third country as another intervening variable to MPE, I am building on these theoretical developments and demonstrating that the literature on "Europeanization beyond Europe" provides an interesting variable, which impacts the effective deployment of EU market power.

In summary, my thesis is completing the lack of consistent empirical research, in the two above-discussed schools, testing MPE in third countries without credible membership perspective, notably in non-trade areas such as energy. Moreover, in line with the suggestion from Damro (2015) that "the EU's exercise of power may be conditioned by external or international contextual factors" that have to be incorporated in MPE as they are "involved in externalization and the ways in which they are transmitted through the three characteristics of MPE"[34], my study provides deeper knowledge about these factors, which enable or hinder the EU to exert market power. This also achieved y partially drawing on the literature on "Europeanization beyond Europe".

[33] Frank Schimmelfennig (2015), "Europeanization beyond Europe", 1-34.
[34] Damro (2015), "Market power Europe: exploring a dynamic conceptual framework", 1343.

4. Historical overview and regulatory state of EU energy policy

This chapter operationalizes the so-called "subjects of externalization"[35], *id est* the market-related policies and regulations which are formed within the EU and then shape policy developments in non-Member States. Regarding EU energy and climate policy, EU legislation and regulations covering the electricity market integration process as well as the EU ETS are hereafter identified as such subjects to be externalised in Switzerland and Ukraine. As defined by Damro, this can occur on an intentional or unintentional basis.[36] Moreover, the market power characteristics of regulatory capacity and relative market size are briefly assessed. Although, the Commission has proposed reforms regarding the regulation of the European electricity market as well as the EU ETS in December 2016, these are still under discussion within the co-decision procedure and will therefore not be taken into account.

4.1 Late "communitarisation" of EU energy policy and shortcomings

The electricity sector has for a long time been considered as a sector of the economy, which needed to receive a special treatment in terms of regulation for political and economic reasons, as it was seen as essential for economic development as well as societal welfare.[37] As a result, most European governments authorised the set up or established themselves vertically integrated energy companies, which were given a monopoly over generation, transmission and distribution of energy to consumers.[38]

This also explains the absence of a common energy policy in the early days of the European project, as the Member States' main concern was to remain in control over their monopolies for the sake of national energy security. [39] It is only in l988 that the Commission, inspired by British and Scandinavian liberalisation experiences,

[35] Damro (2012), "Market power Europe", 690.
[36] Ibid.
[37] A. Ispolinov & T. Dvenadtsatova (2012), "THE CREATION OF A COMMON EU ENERGY MARKET: A QUIET REVOLUTION WITH FAR-REACHING CONSEQUENCES", *Baltic Region, 2*(16), 79.
[38] Ibid.
[39] Kim (2016), *Introduction to EU Energy Law*, Oxford: Oxford University Press, 3.

advocated for the first time the creation of an internal energy market through the elimination of technical barriers to energy trade.[40]

This marks a major switch in the Commission's rationale as energy supply was no longer seen as a service to be provided by the state, but as a commodity obeying to EU competition law.[41] Two major elements needed to be enforced in the Commission's view in order to ensure competition: ending national monopolies (except for the transmission networks) and guaranteeing third party access to transmission networks.[42] The legislative breakthrough finally came in 1996 with Directive 96/92/EC[43], which was part of the first energy package. The latter started separating electricity transmission from its generation and distribution by requiring from vertically integrated companies to adopt different bookkeeping and management structures within the companies and by demanding a partial opening of the electricity market within five years.[44] Nevertheless, these measures proofed to be highly inefficient and a second energy package was adopted in 2002. Central to this package was Directive 2003/54/EC[45], which demanded further unbundling for companies (legal separation of organisation and decision-making structures) and obliged Member States to establish one or more national regulator(s).[46] Furthermore, the opening of the market for non-household consumers and household consumers had to be effective until July 2004 and July 2007 respectively.[47]

Regarding, the fight against climate change, activity at the EU-level started earlier as it was already included as a common EU-wide goal in the Maastricht Treaty of 1992.[48] Climate change, and more specifically the reduction of carbon emissions,

---

[40] Commission of the European Communities, "The internal energy market. Commission working document", COM (88) 238 final, Brussels, 02.05.1988, 1-88.

[41] Ispolinov & Dvenadtsatova (2012), "THE CREATION OF A COMMON EU ENERGY MARKET", 80.

[42] Ibid., 81.

[43] "DIRECTIVE 96/92/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 December 1996 concerning common rules for the internal market in electricity", *Official Journal of the European Communities*, L 27, 30.01.1997, 20-29.

[44] Ispolinov & Dvenadtsatova (2012), "THE CREATION OF A COMMON EU ENERGY MARKET", 81-82.

[45] "DIRECTIVE 2003/54/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC", *Official Journal of the European Communities*, L 176, 15.07.2003, 37-55.

[46] Directive 2003/54/EC, Art. 10, 15 & 23.

[47] Ibid., Art. 21.

[48] Eugenio Cusumano (2014), "Handing Over Leadership: Transatlantic Environmental Governance as a Functional Relationship", *Transworld Working Paper, 36*, 7.

became rapidly a major component of EU energy policy due to the fact that 70-90% of greenhouse-gas (GHG) emissions were generated by energy-related carbon emissions.[49] At the centre of the EU's strategy to push forward its objective of decarbonisation lays the EU ETS, which was created through Directive 2003/87/EC[50] and started to function as a market in 2005.[51]

Due to drawbacks within the ETS and as a result of the disappointing conclusions of the Commission's inquiry on the functioning of the EU energy market, both policy goals of decarbonisation and market integration were addressed together for the first time within the period 2007-2009 with the third energy package as well as the 2020 climate and energy package.[52] The current stage of electricity market liberalisation and the ETS will now be analysed separately in order to assess the potential EU market power for these two EU-wide markets.

4.2 European electricity and carbon emission markets: current regulatory state

4.2.1 Electricity market integration: regulatory state and relative market size

With the third energy package, the EU addressed most of the shortcomings of the two earlier legislative packages regarding third party access to transmission and distribution networks, the effective unbundling of the latter from generation and supply activities and EU-wide market supervision. This reinforced the regulatory capacity of the EU in the field of electricity liberalisation and further stimulated the formation of a common electricity market.

[49] David Buchan & Malcolm Keay (2015), *Europe's Long Energy Journey: Towards an Energy Union?*, Oxford: Oxford University Press, 13.
[50] "Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC", *Official Journal of the European Union*, L 275, 25.10.2003, 32-46.
[51] European Commission (2016), "The EU Emissions Trading System (EU ETS)", *Publications Office*, available online: https://ec.europa.eu/clima/sites/clima/files/factsheet_ets_en.pdf, consulted the 20.03.2017.
[52] Buchan & Keay (2015), *Europe's Long Energy Journey*, 17-19.

To begin with, the guarantee of third party access to transmission and distribution networks has been reinforced with the Electricity Directive 2009/72/EC[53], as it gave the National Regulatory Authorities (NRAs) further monitoring competences regarding network tariffs applied by network companies or subsidiaries.[54] Furthermore, with the "Regulation on network access for cross-border exchange of electricity"[55], electricity network access in cross-border cases is regulated by requiring a "non-discriminatory market-based" allocation of cross-border capacity from national Transmission System Operators (TSOs).[56] Finally, third party access has been also guaranteed by the Commission through the enforcement of EU competition law, notably through the so-called doctrine of essential facilities.[57]

Subsequently, the effective unbundling of vertically integrated undertakings has been further strengthened through the third energy package. Indeed, three models of unbundling are defined in Directive 2009/72/EC: the ownership unbundling model, the Independent System Operator (ISO) model and the Independent Transmission Operator (ITO) model.[58] First, under the full ownership model, which is in principle the model to follow by the Member States, the network company cannot exercise anything else than activities linked to its network.[59] Second, the ISO and ITO models leave member states the discretion to allow network ownership of electricity companies under certain strictly formulated independency conditions to be respected regarding the management of transmission activities.[60] For all three models, it is not allowed to be member in a body, which is legally representing a generation or supply company, and to have this function within a TSO at the same time.[61]

---

[53] "DIRECTIVE 2009/72/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC", *Official Journal of the European Union*, L 211, 14.08.2009, 55-93.

[54] Talus (2016), *Introduction to EU Energy Law*, 19-20.

[55] "REGULATION (EC) No 714/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003", *Official Journal of the European Union*, L 211, 14.08.2009, 15-35.

[56] Regulation ((EC) No 714/3009), Art.12.

[57] Talus (2016), *Introduction to EU Energy Law*, 21-22.

[58] Fernando Cordero Martínez (2014), "The EU Energy Market Puzzle; Is There Still a Way Out? The Case for a Fourth Energy Package Along Completely Different Lines", *Renewable Energy Law and Policy Review, 121*, 2-3.

[59] Directive (2009/72/EC), Art.9.

[60] Ibid., Art.13-16.

[61] Ibid., Art.9.

Finally, since 2009 the scope of EU-wide market supervision has been broadened and a common regulatory agency been created with the Agency for the Cooperation of Energy Regulators (ACER). On the one hand, the NRAs competences and objectives were clarified in order to ensure their commitment to the creation of a common electricity market through the elimination of barriers to cross-border trade.[62] The NRAs full independence from private and public entities was also reinforced through provisions such as separate annual budget allocation and specific rules on the appointment of management.[63] On the other hand, EU-wide institutions were set up with ACER and the European Network of Transmission System Operators for Electricity (ENTSO-E)[64]. The latter replaced the Union for the Co-ordination of Transmission of Electricity (UCTE).[65] ACER is operating since March 2011 and has the role to coordinate cooperation between NRAs and TSOs respectively.[66] Through its Framework Guidelines submitted to the Commission, ACER has also significant influence over the development of network codes, which are then adopted by the Commission and enable comprehensive EU-wide market design.[67] Additionally, ACER has extensive power regarding the supervision of wholesale markets granted by the Regulation on energy market transparency and integrity (REMIT)[68].[69]

Via this upgraded regulatory framework provided by the third energy package, the EU's "regulatory capacity"[70] (one of the MPE characteristics) over electricity market integration has been considerably strengthened since the launch of the first energy package in 1996. With ACER, the EU has, since 2011, a fully operational regulatory agency, which is influential within the process of market design, *id est* the definition of network access and rules governing it. This regulatory authority is notably expressed through the network codes, such as the one established by the

[62] Talus (2016), *Introduction to EU Energy Law*, 49-50.
[63] Directive (2009/72/EC), Art.35.
[64] ENTSO-E, "Union for the Coordination of the Transmission of Electricity (UCTE)", available online: https://www.entsoe.eu/news-events/former-associations/ucte/Pages/default.aspx, consulted the 04.06.2017.
[65] Ibid.
[66] "REGULATION (EC) No 713/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators", *Official Journal of the European Union*, L 211, 14.08.2009, Art.6 & 7.
[67] Regulation ((EC) No 714/3009), Preamble, al.6 & Art.6
[68] "REGULATION (EU) No 1227/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2011 on wholesale energy market integrity and transparency", *Official Journal of the European Union*, L 326, 08.12.2011, 1-16.
[69] Talus (2016), *Introduction to EU Energy Law,* 47-48.
[70] Damro (2012), "Market power Europe", 688.

Commission Regulation on Capacity Allocation and Congestion Management (CACM)[71], which is of relevance regarding our case studies as it affects their inclusion within the European electricity market. Thus, "regulatory capacity" is high.

Regarding the MPE characteristic of the relative market size, it can be argued that it increased substantially in the last two decades as an integrated European electricity market has been emerging. Indeed, this can be observed on the wholesale market, which is separated into various markets depending on the timeframe of trade, and regroups both large industrial consumers and electricity suppliers.[72] More specifically, the formation of a common electricity market has been taking place on the day-ahead market, which is the most important of these markets.[73] Indeed, so-called "market coupling" of national day-ahead markets started in the late 1990s amongst Scandinavian countries and expanded significantly since the mid-2000s, notably in the last years.[74] As a result, the current European day-ahead market is formed by 19 Member States and is becoming increasingly interconnected.[75] The relative market size is therefore important.

Regarding the third MPE characteristic of interest contestation it must be acknowledged that it is difficult to obtain accessible information about it at the EU-level. Moreover, as it will be shown in the next two chapters, the findings suggest that interest contestation took mainly place at a domestic rather than at a EU-level, with local interest groups campaigning in favour or against the adoption of EU-compatible legislation.

[71] "COMMISSION REGULATION (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management", *Official Journal of the European Union*, 25.07.2015, L 197, 24-72.
[72] KU Leuven Energy Institute (2015), "The current electricity market design in Europe", *EI Fact Sheet, 1*, 1.
[73] Ibid., 2.
[74] Buchan & Keay (2015), *Europe's Long Energy Journey"*, 34.
[75] Namely: Austria, Belgium, Denmark, Finland, France, Germany, Greta Britain (without Northern Ireland), Italy, Luxembourg, the Netherlands, Norway, Poland, Portugal, Slovenia, Spain, Sweden, Latvia, Lithuania and Estonia. In ibid., 34.

4.2.2 ETS: current regulatory state and relative market size

The EU ETS is currently the largest GHG emissions trading scheme worldwide.[76] It is a central tool in the context of the EU's commitment to reduce its GHG emissions by 20% until 2020 and by 40% until 2030 (based on the levels of GHG emissions in 1990), laid down in "Directive 2009/29/EC"[77] and the "2030 Energy Strategy"[78] respectively. The EU ETS has a clear external dimension as it was already specified in its founding "Directive 2003/87/EC" that the EU ETS should be linked to other markets.[79] Due to a massive oversupply of carbon allowances, the regulatory state of the EU ETS has been changing substantially since its introduction in 2005.

The EU ETS functions under the so-called principle of "cap and trade", which means that a maximum of GHG emissions authorised for the sectors included in the scheme is fixed for a multi-year base in the form of carbon allowances, which can then be traded within a EU-wide market.[80] The sectors covered by the EU ETS are power and heat generation, energy-intensive industries and civil aviation (since 2012).[81] The functioning of the system has been divided into various trading periods. During the two first periods (2005-2007 and 2008-2012), carbon allowances were distributed independently by the Member States, who provided their industries with sometimes even more emission allowances than they used to emit leading to a significant price drop for carbon allowances in 2006 already.[82] Therefore, the whole system became ineffective as there was no economic incentive, as planned, to reduce GHG emissions. A major overhaul of the ETS Directive, starting during the third trading phase (2013-2020), was therefore adopted with "Directive 2009/29/EC". Since 2013, allowances are distributed to Member States by the Commission based on "past total industrial emissions" in order to avoid the initial problems of oversupply of

[76] International Carbon Action Partnership (ICAP) (2016), "Emissions Trading Worldwide: International Carbon Action Partnership (ICAP) Status Report 2016", Berlin: ICAP, 31.

[77] "DIRECTIVE 2009/29/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community", *Official Journal of the European Union*, L 140, 05.06.2009, 63-87.

[78] European Commission, " COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS: A policy framework for climate and energy in the period from 2020 to 2030", Brussels, 22.1.2014, COM(2014) 15 final, 5.

[79] Directive 2003/87/EC, Art.25.

[80] European Commission (2016), "The EU Emissions Trading System (EU ETS)".

[81] Ibid.

[82] Buchan & Keay (2015), *Europe's Long Energy Journey,* 20.

allowances.[83] Moreover, allowances were gradually directly auctioned on the market by businesses, with power generating industries being directly forced to do so since 2013.[84] Nonetheless, due to the financial crisis of 2008 as well as the following sovereign-debt crisis in the Eurozone, these measures were ineffective and further reforms such as the creation of a market stability reserve, aiming at neutralising the allowances in surplus by taking them out of the market, were decided in 2015.[85]

To begin with, "regulatory capacity" is fairly extensive, as the Commission possesses great sanctioning authority with the competence to fine companies emitting CO_2 without possessing the necessary carbon emission allowances.[86] Additionally, several bodies, most importantly the common auction platform of the European Energy Exchange (EEX) in Leipzig, the three national auction platforms of Germany, the UK and Poland, and the Commission, are responsible for the monitoring of the auctioning procedure.[87] Furthermore, regulatory coherence and regulatory expertise has increased, as the Commission has been distributing carbon allowances independently to the Member States since 2013.

Subsequently, the EU ETS market is the biggest carbon emissions trading market world-wide covering approximately 45% of the EU's GHG emissions, on which 26 million allowances are exchanged on average on a daily basis (based on figures from 2015).[88] It comprises the 28 Member States as well as Iceland, Lichtenstein and Norway.[89] Given these facts, the relative market size of the EU ETS is substantial.

As for the electricity market, the variable of interest contestation has proven to be difficult to assess for the EU ETS as well.

To conclude this chapter it can be asserted that according to MPE, both in the case of the electricity and carbon emissions markets, the EU's market power should be extensive. It will now be scrutinised in the next two chapters whether this is verified in terms of *acquis* externalization in Switzerland and Ukraine.

---

[83] Ibid., 21.
[84] European Commission (2016), "The EU Emissions Trading System (EU ETS)".
[85] Buchan & Keay (2015), *Europe's Long Energy Journey,* 26-31.
[86] ICAP (2016), "Emissions Trading Worldwide", 32.
[87] Edwin Woerdman (2015), "The EU Greenhouse Gas Emissions Trading Scheme", *Working Paper Series in Law and Economics*, University of Groningen, 15-16.
[88] European Commission (2016), "The EU Emissions Trading System (EU ETS)".
[89] ICAP (2016), "Emissions Trading Worldwide", 32.

5. Switzerland

Switzerland has always nurtured a close economic and political relationship with the EU, notably with its most important neighbouring states: Germany, France and Italy. In order to understand the structural context of the EU's rule externalization in Switzerland regarding electricity market liberalisation and the set up of a domestic ETS, it is necessary to recall the unique model of cooperation Switzerland has been fostering with the EU.

5.1 The uniqueness and challenges of the bilateral path

To begin with, the importance of the economic relations between Switzerland and the EU is portrayed by the early signature of a Free Trade Agreement in 1972.[90] While, the relationship flourished economically, it was substantially destabilised by political challenges with the establishment of the European Economic Area (EEA) and the Swiss population's rejection to join it in 1992, which resulted in Switzerland remaining the only non-EEA member of the European Free Trade Association (EFTA).[91] Since then, Switzerland has followed a unique path of cooperation with the EU through the set up of 16 bilateral sectorial agreements between 1999 (first package) and 2004 (second package), linking the country closely to the EU Single Market and EU programmes.[92] In order to ensure the compliance of Switzerland with the contentious Agreement on Free Movement of Persons (AFMP)[93], a so-called guillotine clause was included in the first package giving a party the possibility to end all other agreements if the other party does not respect one of these agreements anymore.[94] In 2008, the Federal Council (the Swiss government), called for the

[90] "Agreement between the European Economic Community and the Swiss Confederation", 22.07.1972, *Official Journal*, L300, 31.12.1972, 189-280.
[91] René Schwok (2009), *Switzerland - European Union: An Impossible Membership?,* Brussels: P.I.E Peter Lang, 25-30.
[92] Ibid., 38 & 53-54.
[93] "Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons - Final Act - Joint Declarations", *Official Journal*, L 114, 30.04.2002, 6-72.
[94] Sandra Lavenex & René Schwok, "The Swiss Way: The nature of Switzerland's relationship with the EU". In Eriksen, Erik O. & John Erik Fossum (Eds.) (2015), *The European Union's Non-Members: Independency under hegemony?,* London and New York: Routledge, 39.

negotiations of a third package of bilateral agreements, *inter alia* covering the areas of electricity and the EU ETS.[95] However, since 2008, the EU repeatedly insisted on the fact that, before any further bilateral agreement can be concluded, an institutional framework agreement needs to be struck between the EU and Switzerland.[96] The latter is officially under negotiation since May 2014.

With this general introduction to the state of the EU's relations with Switzerland, the extent of externalization of EU market-related rules in Switzerland can now be scrutinised.

5.2 Liberalizing the Swiss electricity market: proactive legislative activity mitigated by referenda and institutional blockages with the EU

5.2.1 Mid-1990s to 2002: Legislative activity towards acquis convergence

From a sole legislative point of view, the importance of the European electricity market and the influence of EU policy developments on electricity in 1996 can be observed in the government's political discourse as well as in the Federal Act on the Electricity Market (FAEM)[97] adopted by Parliament in December 2000.

To begin with, from the mid-1990s on, the Swiss authorities clearly followed the European market integration agenda in the field of electricity by starting to set up the contours of Swiss market liberalisation with the reports "Opening of the electricity market" and "Opening of the electricity in the domain of electricity", which were published between 1995 and 1997, on the basis of consultations with public and private stakeholders from the electricity sector.[98] The importance of the European

[95] Ibid.

[96] Council of the European Union, "Draft Council conclusions on EU relations with EFTA countries", Brussels, 05.12.2008, 16651/1/08 REV 1, 8; Council of the European Union, "Council conclusions on EU relations with EFTA countries", 3060th GENERAL AFFAIRS Council meeting Brussels, 14.12.2010, 7; Council of the European Union, "3213th Council meeting: Transport, Telecommunications and Energy", Brussels, 20.12.2012, 17591/12, PRESSE 523 PR CO 76, 32; Council of the European Union, "Council conclusions on a homogeneous extended single market and EU relations with Non-EU Western European countries", General Affairs Council meeting, Brussels, 16.12.2014, 7; Council of the European Union, "Council conclusions on EU relations with the Swiss Confederation", PRESS RELEASE 93/17, 28.02.2017, available online: http://www.consilium.europa.eu/press-releases-pdf/2017/2/47244655317_en.pdf, consulted the 01.06.2017.

[97] "Federal Act on the Electricity Market", FF 2000, 15.12.2000, 5761-5773.

[98] Federal Council, "Message concernant la loi sur le marché de l'électricité (LME)", FF 99.055, 07.06.1999, 6647.

electricity market and of the compatibility of Swiss legislation with "Directive 96/92/EC" is highlighted in the message of the Federal Council concerning the FAEM.[99] Indeed, according to the Swiss government, the liberalisation process as designed through the FAEM was explicitly drafted to be compatible with the afore-mentioned Directive.[100] Furthermore, the Federal Council stresses the need to "prevent the isolation of the Swiss generation entities in Europe and to ensure them free access to the EU market"[101]. In addition, the Federal Council argues that the "retake of a large portion of EU regulations" is necessary to provide large industrial consumers in Switzerland with the same competitive advantage of lower market prices as their European competitors.[102] The regulatory state in the EU as well as the importance of the European electricity market, therefore heavily weighed in in the considerations of the Swiss legislator regarding the design of the FAEM, which was adopted in December 2000. The latter, regrouped the principal elements of the EU Directive with the requirement for undertakings to provide non-discriminatory third party access to the transmission network.[103] The FAEM even went beyond the European Directive as it foresaw a complete opening of the Swiss electricity market until 2006, whereas EU Member States were only obliged to open their markets for 34% of the market until 2004.[104] This observation of a drive to realise a EU *acquis*-compatible liberalisation process is underlined as well by the stakeholder analysis the scholars Jegen & Wüstenhagen realised regarding the project of market liberalisation in Switzerland in the late 1990s.[105] Indeed, they concluded that among all stakeholders related to the electricity policy and market, a great majority saw the compatibility with EU legislation as a top priority, overshadowing other goals such as efficiency and economic gains as a result of a price drop.[106] Nonetheless, as it will be seen in the next section, several interest groups, notably the trade unions who

[99] Ibid., 6646-6740.
[100] Ibid., 6648.
[101] Unless stated otherwise, the quotations from documents of Swiss authorities and private stakeholders have been translated by the author. In Federal Council, "Message concernant la loi sur le marché de l'électricité (LME)", 6649.
[102] Federal Council, "Message concernant la loi sur le marché de l'électricité (LME)", 6650.
[103] FAEM, Art.5 & 8.
[104] Federal Council, "Message concernant la loi sur le marché de l'électricité (LME)", 6729.
[105] Maya Jegen & Rolf Wüstenhagen (2001), "Modernise it, sustainabilise it! Swiss energy policy on the eve of electricity market liberalisation", *ELSEVIER, Energy Policy, 29*, 45-54.
[106] Ibid., 47.

followed an anti-liberalisation agenda, made use of the optional referendum and compromised the market liberalisation project.

5.2.2 The 2002 referendum, setback for electricity market liberalisation

Although, the liberalisation of the electricity market was embraced by a majority of the political elite, a block of various interest groups, formed by smaller electricity companies, the socialist and green parties and most importantly the Swiss Federation of Trade Unions (SFTU), strongly opposed the FAEM and made use of the possibility to call for a referendum given by Art.34 of the latter.[107] The SFTU, which was the most virulent opponent to the law, argued that the FAEM would result in a dysfunctional electricity market dominated by a few large suppliers who would abuse their market power.[108] Regardless of the political compromise reached in parliament, 52.6% of Swiss voters showed sympathy for these arguments and rejected the FAEM in September 2002.[109] While this setback suggests the failure of *acquis* approximation, the Swiss authorities made a second attempt to adapt electricity market conditions to EU regulation only two years later as a reaction to the second energy package pushing forward European market integration.

5.2.3 Regulatory approximation finally adopted in 2007

With the legislative developments in the EU, resulting in the adoption of the second energy package in 2004 and forcing Member States to fully open their electricity markets until 2007, the pressure to align with EU legislation became even more important and led to the adoption of the Federal Electricity Supply Act (FESA)[110] in 2007 creating a partially liberalised electricity market in Switzerland. Yet, full liberalisation, which was initially planed for 2013, has not become reality yet and

---

[107] Ian Bartle (2006), "Europeans outside the EU: Telecommunications and Electricity Reform in Norway and Switzerland", *Governance: An International Journal of Policy, Administration, and Institutions, 19*(3), 423-424.

[108] Adrian Zimmermann (2001), "La sécurité de l'approvisionnement ne doit pas être négligemment mise en danger: Non à la Loi sur le marché de l'électricité (LME)", *Union Syndicale Suisse (USS), 14*, 25.

[109] Federal Chancellery, "Votation populaire du 22.09.2002", available online: https://www.admin.ch/ch/f/pore/va/20020922/index.html, consulted the 01.06.2017.

[110] "Federal Electricity Supply Act", RS 734.7, 23.03.2007, 1-18.

remains uncertain due to various factors such as blockages within the bilateral relations with the EU and the fear of a referendum in case of market opening.

To start with, albeit the Swiss population rejected the principle of market liberalisation only two years earlier, the Federal Council put liberalisation on the agenda again in 2003. One of the motivations of the executive was to re-establish regulatory order after the Federal Court's decision to apply the "Federal Act on Cartels" [111] to the sector of electricity in the case "Entreprises Electriques Fribourgeoises (EEF) contre Watt/Migros"[112] creating a legal precedent for the free choice of electricity supplier for industrial consumers, without however providing any regulatory framework.[113] The two other main motivations were more important with regards to our study. First, the Swiss authorities argued that market reforms were necessary due to legislative and regulatory developments in the EU.[114] Second, they stressed that the increasing electricity cross-border trade developing with the EU, made it more and more crucial for the country in terms of security of supply to secure its market access through legislation.[115] This shows that, with the upcoming complete liberalisation of the Member States' electricity markets until 2007 induced by the second energy package, the risk of being left out of the market was of great concern for Swiss policy-makers. Thus, through the FESA the Federal Council sought to secure "the position of Switzerland as electricity hub, the access to the European electricity market and international cooperation regarding security of supply"[116]. Concretely, the FESA gives large industrial consumers of more than 100 MWh per year the possibility to choose their supplier since October 2009.[117] Moreover, unbundling through the separation of accounting between transmission and other activities as well as third party access on a non-discriminatory basis had to be implemented by Swiss electricity companies.[118] Furthermore, within this legislative context, a TSO was created in order to manage the operation and supervision of the

[111] "Federal Act on Cartels and other Restraints of Competition", RS 251, 06.10.1995, 1-22.
[112] Case "Entreprises Electriques Fribourgeoises (EEF) contre Watt/Migros" (ATF 129 II 497), 17.06.2003.
[113] Federal Council, "Message relatif à la modification de la loi sur les installations électriques et à la loi fédérale sur l'approvisionnement en électricité", FF 04.083, 03.12.2004, 1499.
[114] Ibid., 1494.
[115] Ibid.
[116] Ibid., 1500.
[117] International Energy Agency (IEA) (2007), "Energy Policies of IEA Countries: Switzerland 2007 Review", *OECD/IEA*, Paris: *IEA Publications*, 77.
[118] FESA, Art.10 & 13.

transmission grid from 2006 on in a non-discriminatory and independent manner (it had to be in full possession of the Swiss transmission grid until 2013).[119] Finally, the Electricity Commission (ElCom) was founded to monitor the new regulatory order.[120] With the FESA, major elements of the European electricity-market *acquis* such as the set up of an independent NRA and third party access to the transmission grid are met. Yet, full market liberalisation was not legally fixed but rather projected as a goal to be implemented in a second stage five years after the entry into force of the FESA through a Federal Decree with a possibility to call for a referendum.[121]

5.2.4 EU acquis development and Swiss inability to follow the pace

With the third energy package, the regulatory state was modified again, leading to the call for a revision of the FESA by the Federal Council in 2009.[122] Within this context, parliamentary working groups raised concern about the current domestic regulatory incompatibility with EU legislation regarding the three models for legal unbundling of the TSO as well as the issue of distribution network unbundling enforced by "Directive 2009/72/EC".[123] Yet, the revision process has been stalled due to the fundamental changes that the Swiss energy policy has been going through since the nuclear accident in Fukushima in March 2011. Indeed, it was decided the same year to gradually phase out nuclear power plants. In order to compensate the share of electricity production from these plants, which represented 37% of the Swiss electricity mix in 2012, the Federal Council formulated the "Energy Strategy 2050" in 2013 by proposing a substantial increase of the electricity production from renewable energy sources (RES) as well as measures of enhanced energy efficiency.[124] In September 2016, this strategy was translated into legislation through the Energy Act (EnA)[125]. However, until recently, the entry into force of the latter has been stuck in

[119] Ibid., Art.18-20.
[120] Ibid., Art.21-22.
[121] Ibid., Art.34, al.3.
[122] Federal Department for the Environment, Transport, Energy and Communications - Federal Office of Energy (2010), "AG Unabhängigkeit/ schweizerische Beherrschung swissgrid AG: Schlussbericht", 3.
[123] Ibid., 8-26,
[124] Federal Council, "Message relatif au premier paquet de mesures de la Stratégie énergétique 2050 (Révision du droit de l'énergie) et à l'initiative populaire fédérale «Pour la sortie programmée de l'énergie nucléaire (Initiative ‹Sortir du nucléaire›)»", FF 13.074, 04.09.2013, 6775-6785.
[125] "Energy Act", FF 2016, 30.09.2016, 7469-7518.

limbo as the right-wing Swiss People's Party, opposed to the phase-out of nuclear energy, launched a referendum on it. With the population's approval of the path taken by the authorities in the referendum of May 2017, the EnA and related legislation is planed to enter into force in early 2018.[126]

In addition, the *acquis* approximation process concerning the complete opening of the electricity market to free competition has been restrained by the same interest groups, which were already active in the early 2000s and are still opposed to it. Indeed, as expressed in October 2014, the SFTU is demanding the abandonment of the market-opening project as it still sees it as dangerous for the electricity sector and security of supply in general.[127] Furthermore, in a stakeholder consultation issued by the Federal Office of Energy regarding the second step of complete market opening, it appeared that a majority of stakeholders asked the Swiss authorities to better coordinate the market opening with the "Energy Strategy 2050" and to harmonise it with the currently negotiated electricity agreement, which will be discussed below.[128] As a consequence, the Federal Council took the decision, in May 2016, to report the complete liberalisation of the electricity market and to reassess the legislative, political and economic context in 2017.[129]

5.2.5 The need for a bilateral electricity agreement

This wait-and-see policy the Swiss authorities are currently playing started to affect negatively Switzerland's position within the European electricity market. Indeed, as from 2014 on, Switzerland was not allowed to participate in the market coupling with its European partners on the day-ahead market and the situation is

[126] Federal Council, "Conférence de presse du Conseil fédéral du 21.5.2017", available online: https://www.admin.ch/gov/fr/accueil/documentation/conferences-de-presse/2017/5/21_05_2017_1961.html, consulted the 15.06.2017.

[127] Swiss Federation of Trade Unions (SFTU), "L'ouverture du marché de l'électricité met la sécurité de l'approvisionnement en danger: Arrêté fédéral sur l'ouverture du marché de l'électricité", 08.10.2014, available online: http://www.uss.ch/themes/services-publics/article/details/louverture-du-marche-de-lelectricite-met-la-securite-de-lapprovisionnement-en-danger/, consulted the 15.05.2017.

[128] Federal Department for the Environment, Transport, Energy and Communications - Federal Office of Energy (2016), "Rapport sur les résultats: Consultation concernant l'arrêté fédéral relatif à la deuxième étape de l'ouverture totale du marché de l'électricité", 6-7.

[129] Federal Council, "Le Conseil fédéral souhaite reporter l'ouverture complète du marché de l'électricité", 04.05.2016, available online: https://www.admin.ch/gov/fr/accueil/documentation/communiques.msg-id-61608.html, consulted the 15.05.2017.

unclear as well for the planed European Intraday market platform "XBID".[130] While Swissgrid is still able to cooperate with neighbouring TSOs on a bilateral basis, this is becoming more and more complicated as it is left out of the European market design process.[131] Given the fact that yearly around 30 TWh/a of electricity transits through Switzerland, which as a comparison equals half of the Swiss electricity consumption, this is a source of major concern for electricity stakeholders as well as for the government.[132]

In order to avoid this situation and fix legally reciprocal electricity market access, Switzerland already launched negotiations on a bilateral electricity agreement with the EU in 2007.[133] More precisely, the goal of the agreement is to ensure further legal certainty and regulatory recognition for future trans-border electricity trade.[134] This is of high importance for Switzerland as it is estimated to possess 20% of the cross-border capacity within the European grid.[135] It is notably of high importance for ElCom to be accepted as a member in ACER in order to participate in the design of the network codes, shaping future market and grid design in the EU.[136] The agreement also seeks to ensure continuous participation of Switzerland in EU energy policy-making as it has been enabled to participate in informal meetings of the European energy ministers since 2009 as well as in the Florence forum on electricity with an observer status.[137] However, since 2014 the EU has been denying this privileged access to Switzerland as it wants it to adopt further *acquis*-compatible measures such as full market liberalisation, the suppression of the priority given to long-term contracts in cross-border trade with France and the execution of REMIT.[138]

---

[130] Swissgrid (2015), "Contributions to the Market Design for the Swiss Energy Strategy 2050", *Swissgrid Ltd*, 42.
[131] Ibid.
[132] Bruno Ganz & Daniel Giger (2016), "Die Liberalisierung des Strommarktes: Meterspur Anlass 2016", *RAILplus*, 1-17, available online: http://www.railplus.ch/media/archive1/Meterspuranlass2016/DieLiberalisierungdesStrommarktes.pdf, consulted the 05.05.2017.
[133] Federal Department of Foreign Affairs - Directorate for European Affairs (2015), "Strom", available online: https://www.eda.admin.ch/content/dam/dea/de/documents/fs/02-FS-Strom_de.pdf, consulted the 01.06.2017.
[134] Ibid.
[135] International Energy Agency (IEA) (2012), "Energy Policies of IEA Countries: Switzerland 2012 Review", 100.
[136] Federal Department of Foreign Affairs - Directorate for European Affairs (2015), "Strom".
[137] Federal Council, "Message relatif au premier paquet de mesures de la Stratégie énergétique 2050", 6791.
[138] Ibid., 6793.

Nonetheless, as illustrated above, full market liberalisation is stuck in limbo. This, *inter alia,* slowed down the negotiations of the electricity agreement. Additionally, the fact that the EU made conditional the signature of this bilateral agreement to the conclusion of an institutional framework agreement with Switzerland, as affirmed expressly by the former Commission's president Barroso in 2012, severely affected the negotiations as well.[139]

5.3 EU ETS: completed *acquis* integration into domestic legislation, yet no market coupling so far

Although the Swiss ETS, set up in 2008, was not directly *acquis* compatible, it was rapidly adapted to the EU ETS in order to gain market access. However, this access has not yet been granted.

5.3.1 Beginnings of the Swiss ETS

To start with, the Swiss ETS under its initial state must be seen in the context of the Federal Act on the reduction of CO_2 emissions (CO_2 Act)[140], which entered into force in May 2000. With the main target to diminish Swiss GHG emissions by 10% compared to the 1990 level, the CO_2 Act introduced a carbon tax for industries being responsible for most of the CO_2 emissions and using fossil fuels.[141] In this context, the Swiss ETS was created in 2008 as a system enabling companies to avoid this tax by receiving an allowance to emit CO_2 in exchange of commitments to the reduce these emissions over time.[142] Allowances could then be sold if the targeted reduction was surpassed or bought in the reverse case.[143] It has been demonstrated by Schäfer that

[139] José Manuel Barroso, "Lettre de la Commission de l'UE à la Suisse", Bruxelles, 21.12.2012, PRES (2012), 1548156, available online: https://www.eda.admin.ch/content/dam/dea/de/documents/eu/Brief-BXL-CH-20121221_de.pdf, consulted the 17.06.2017.
[140] "Federal Act on the Reduction of CO_2 Emissions (CO_2 Act)", RS 641.71, 08.10.1999, 1-12.
[141] CO_2 Act, Art.7.
[142] Federal Council, "Bundesrat erteilt Verhandlungsmandat für Verknüpfung mit EU-Emissionshandel", 16.12.2009, available online https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-30717.html, consulted the 15.05.2017.
[143] Ibid.

Swiss policy-makers already had in mind a linkage with the EU ETS and sought compatibility between both systems since the mid-2000s.[144]

5.3.2 Linking the Swiss emissions market to the EU market: a matter of competitiveness

In the preparatory process of the revision of the Swiss ETS, an overwhelming majority of the stakeholders consulted by the Swiss authorities expressed their support for a coupling of the Swiss ETS with the European model.[145] As a result, the Federal Council choose the option of EU-conform rule adoption through the revision of the CO_2 Act, which was adopted in December 2011 and came into force in 2013.[146] Thus, following the EU model, a genuine cap-and-trade system was adopted, and participation made mandatory for large GHG emitters for the 2013-2020 period.[147] Subsequently, the conditions for the free allocation of allowances as well as the sanctioning mechanism were adapted to the ones set up for the EU ETS.[148] Finally, Switzerland imitated the 20% GHG emissions reduction goal fixed by the EU 2020 climate and energy package by setting itself the same target-reduction for 2020.[149] In the case of the EU emissions trading market, it can be asserted that Switzerland largely adapted its legislation in order to obtain market access. Economically, the Swiss move was motivated by the fact that, with only 55 participating companies, the Swiss ETS market was too small to enable genuine trade to happen.[150] Furthermore, due to the fact that the European prices for emission allowances have consistently remained lower than the Swiss ones, Swiss firms were facing substantial "competitive disadvantage" towards the European concurrence.[151]

---

[144] Werner Schäfer (2009), "Some Talk, No Action (Yet): Interdependence, Domestic Interests and Hierarchical EU Governance in Climate Policy", *Swiss Political Science Review, 15*(4), 692.
[145] Federal Department for the Environment, Transport, Energy and Communications - Federal Office for the Environment, "Revision CO2-Gesetz: Auswertung der Vernehmlassung", 30.04.2009, 25.
[146] "Federal Act on the Reduction of CO_2 Emissions (CO_2 Act)", RS 641.71, 23.12.2011, 1-14.
[147] Federal Department for the Environment, Transport, Energy and Communications - Federal Office for the Environment (2013), "Système d'échange de quotas d'émission SEQE", Bern: FOEN, 5.
[148] Ibid.
[149] Art.3, CO_2 Act.
[150] Dominik Englert, "CASE STUDY: LINKING THE SWISS AND EU ETS". In Katie Kouchakji (eds.) (2015), "Greenhouse Gas Market 2015/16: Making Waves", *INTERNATIONAL EMISSIONS TRADING ASSOCIATION (IETA)*, 54.
[151] Ibid.

Nonetheless, in order to enable market fusion, both partners needed to conclude a formal agreement mutually recognising emission allowances and fixing technicalities. The negotiations to link both systems were launched in spring 2011 and were finally concluded in January 2016.[152] Yet the agreement still needs to be signed and ratified on both sides. Indeed, as seen in section 5.1, the conclusion of an institutional framework agreement is a pre-condition for the final conclusion of further agreements with the EU.

In summary, this chapter has shown that *acquis* approximation has been constantly on the agenda in Switzerland and is observable both for electricity and emissions trading. Yet, due to a series of blockages, this was only partially achieved for electricity and market linkage did not occur so far between the Swiss and EU ETS.

[152] Federal Department for the Environment, Transport, Energy and Communications - Federal Office for the Environment (2016), "Linking the Swiss and EU emissions trading schemes", available online: https://www.bafu.admin.ch/bafu/en/home/topics/climate/info-specialists/climate-policy/emissions-trading/linking-the-swiss-and-eu-emissions-trading-schemes.html, consulted the 10.06.2017.

6. Ukraine

Since its independence in 1991, Ukraine has been going through multiple economic and political crises, which have affected its energy policy. As it will be explained below, the externalization of market policies and regulations in the field of electricity liberalisation and carbon emissions mitigation has been more complicated in Ukraine than in Switzerland as the genuine implementation of political commitments has remained an issue until recently. Before discussing the results of the findings regarding energy *acquis* externalisation in Ukraine, it is useful to briefly recall the domestic political context in which the EU tried to develop stable bilateral relations from the mid-1990s onwards.

6.1 Domestic political context and bilateral relations with the EU

Throughout the presidency of the first elected president Kuchma (1994-2004), which largely shaped Ukraine's political landscape, the Ukrainian economic elite emerged as a crucial political player, which regrouped in so-called "oligarchic clans" and increasingly infiltrated the political system to ensure economic gains.[153] A part of these clans also actively supported the "Orange Revolution", a massive pro-EU movement that opposed corruption and electoral fraud during the 2004 elections.[154] Indeed, an important part of the oligarchs backed reforms giving the parliament more power and, to a more limited extent, were also in favour of EU *acquis* approximation.[155] This was motivated on the one hand by their desire to ensure their control over the political process (higher certainty through the Parliament) and, on the other hand, to attract desperately needed investments from the West to modernise the Ukrainian economy.[156] Although the parliament was given more power, the "Orange Revolution" did not deliver the promised structural changes and in 2010, when

[153] Inna Melnykovska & Rainer Schweickert (2008), "Bottom-up or top-down: what drives the convergence of Ukraine's institutions towards European standards?", *Southeast European and Black Sea Studies, 8*(4), 448-449.
[154] Ibid., 450.
[155] Ibid., 450-456
[156] Ibid.

Yanukovych became president, the presidential power prerogatives were reaffirmed.[157]

With regards to the EU, its relations with Ukraine have for long been framed by the Partnership and Cooperation Agreement (PCA), which was signed in 1994 and entered into force in 1998 with the aim to "provide an appropriate framework for political dialogue"[158]. Yet, at the time of the conclusion of the PCA, the EU's energy policy was still under discussion. Therefore, the provisions on the field of energy policy only stipulated that "cooperation shall take place", without mentioning clear goals and roadmaps.[159] This began to change in 2005 when a "Memorandum of Understanding on cooperation in the field of energy" was signed and proposed for the first time a roadmap for the integration of Ukrainian electricity market into the EU's market.[160] This cooperation was further intensified with the acceptation of Ukraine within the Energy Community in September 2010.[161] Finally, the EU and Ukraine decided to upgrade and significantly deepen their relationship through the conclusion of an "Association Agreement"[162] in 2012. After the initial refusal of Ukraine to sign the agreement in 2013, which lead to months of political turmoil and the departure of president Yanukovych, the new Ukrainian government finally signed the "Association Agreement" in mid-2014. Its official entry into force should occur in 2017 as the last Member State that hasn't ratified the agreement, namely the Netherlands, was able to reach a compromise over the ratification of the latter in Spring 2017.[163]

---

[157] Richard Sakwa (2016), *Frontline Ukraine: Crisis in the Borderlands*, London: I.N. Tauris, 52-56.

[158] "Partnership and Cooperation Agreement between the European Communities and their Member States, and Ukraine", *Official Journal of the European Union,* L 49, 19.02.1998, Art.1.

[159] Ibid., Art.61.

[160] "MEMORANDUM OF UNDERSTANDING on cooperation in the field of energy between the European Union and Ukraine", *Mission of Ukraine to the European Union,* available online: http://mfa.gov.ua/mediafiles/sites/ukraine-eu/files/Ukraine-EU_MOU_in_energy_2005.pdf, consulted the 01.06.2017.

[161] European Commission, "Commission welcomes Ukraine in Energy Community", 24.09.2010, available online: http://europa.eu/rapid/press-release_IP-10-1173_en.htm, consulted the 05.05.2017.

[162] "ASSOCIATION AGREEMENT between the European Union and its Member States, of the one part, and Ukraine, of the other part", *Official Journal of the European Union,* 29.05.2014, L161, 3-2137.

[163] European Commission, "Statement by Jean-Claude Juncker, President of the European Commission, on the vote in the Dutch Senate on the ratification of the Association Agreement between the European Union and Ukraine", 30.05.2017, available online: http://europa.eu/rapid/press-release_STATEMENT-17-1461_en.htm, consulted the 02.06.2017.

6.2 Electricity market liberalisation in Ukraine, late but considerable *acquis* approximation

6.2.1 Electricity market liberalisation and de-liberalisation without EU influence

Ukraine already adopted market liberalisation measures for its electricity sector at an early stage in the mid-1990s. Yet, these were not successful in setting up a functioning liberalised electricity market and, more importantly, no correlation between these measures and EU regulatory and legislative developments (first and second energy packages) could be found.

To begin with, contrary to the Swiss case, the first liberalisation wave that occurred in the EU after 1996, did not impact Ukrainian policy-making. Indeed, the liberalisation of the Ukrainian electricity sector was rather caused by internal economic problems, which resulted from the inherited obsolete Soviet infrastructure as well as from the sharp price increase of energy imports from 1992 onwards.[164] The end of cheap energy import prices from Russia forced the government to subsidise the latter and almost led to state bankruptcy in 1994.[165] International financial institutions, notably the International Monetary Fund and the World Bank, helped Ukraine to avoid state insolvency but also conditioned their help to electricity market reforms.[166]

Therefore, and for economic reasons it was decided, per presidential decree in May 1994 and through several subsequent decrees, to modernise the sector and attract private investments.[167] In theory, a competition-friendly environment was set up through the creation of a National Electricity Regulatory Commission (NERC) and a state-owned TSO, which also controlled the National Dispatch Center, a market platform buying all electricity from generators and selling it then to the suppliers (applying either regulated or non-regulated tariffs).[168] These market changes were eventually translated into law in 1997 with the "Law of Ukraine 'on Electric Power Industry'"[169].

[164] Hofer (2008), *Die Europäische Union als Regelexporteur,* 134-137.
[165] Ibid., 136.
[166] Ibid., 146-147.
[167] Laszlo Lovei (1998), "Electricity Reform in Ukraine: The impact of weak governance and budget crises", *Viewpoint, The World Bank Group, 168*, 3.
[168] Ibid.
[169] "Law of Ukraine 'on Electric Power Industry'", 575/97-VR, 16.10.1997.

It has been argued in the literature that the regulatory evolution within the Union did not play any role within these liberalisation reforms.[170] Moreover, in reality the Ukrainian electricity market remained in a state of semi-liberalisation as the initial issues of non-competitive prices kept low through state subsidies, the development of barter in the electricity sector and problems of non-payment of Ukrenergo by an important part of the public and private end-consumers made the wholesale market rapidly un-transparent and prevented competition to develop.[171] Additionally, the government exerted pressure on the regulatory authorities in order to keep the prices down.[172] This is also partially explained by the opposition to market reforms of some influential oligarchs whose industries were benefiting from the subsidised electricity prices within the broken system.[173] Many of these major issues remained in place for the following two decades.

Subsequently, legal approximation could not be observed in the electricity sector in the early 2000s although Ukraine adopted the "National Programme for Approximation of the Legislation of Ukraine of that of the European Union" in 2003.[174] On the contrary, in 2004 it was decided to re-centralise a majority of the non-nuclear generation and distribution entities under the state-owned Energy Company of Ukraine, which gave the state control over the electricity sector back.[175] It has been demonstrated by Hofer that these measures aimed at enhancing the government's influence over the electricity sector and weakening the oligarchs, which were becoming increasingly powerful. [176]

This changed from the mid-2000s on as the EU gained more and more interest in shaping Ukraine's regulatory framework in the field of energy and due to the growing importance of the European electricity market for Ukraine.

---

[170] Hofer (2008), *Die Europäische Union als Regelexporteur*, 138.
[171] Lovei (1998), "Electricity Reform in Ukraine", 5-6.
[172] Ibid., 5.
[173] Hofer (2008), *Die Europäische Union als Regelexporteur,* 155-156.
[174] Stephan Hofer, "Unwelcome Europeans: EU External Governance and Shallow Europeanisation in Ukraine", in Dirk De Bièvre & Christine Neuhold (eds.) (2007), *Dynamics and Obstacles of European* Governance, Cheltenham: Edward Elgar, 125-126.
[175] International Energy Agency (IEA) (2006), "Ukraine: Energy Policy Review 2006", 273.
[176] Hofer (2008), *Die Europäische Union als Regelexporteur*, 153-157.

6.2.2 Increasing importance of EU model, yet lack of effective acquis approximation

From the mid-2000s onwards, the EU regulatory state more and more clearly became the reference model for electricity market reforms as the goal to integrate the European electricity market began to appear as a lucrative option for electricity exports and the integration of the European single market as a whole an increasingly welcomed long-term goal.[177] Moreover, the EU much more directly institutionalised the externalization of EU *acquis* from 2005 onwards first on a bilateral basis and then on a multilateral one through the Energy Community. Nonetheless, whereas commitments were rapidly formulated, Ukraine did not deliver the awaited comprehensive reforms for almost a decade.

To start with, the premises for the growing importance of the European electricity market for Ukrainian policy-makers in terms of exports and security of supply were already observable in September 2003 when the UCTE confirmed a permanent connection of the 'Burshtyn Island', to the European grid via Hungary, Slovakia (UCTE members at the time) and Romania.[178] This first experiment of grid interconnection with the European grid was however a long-lasting process launched in 1995 and limited to a small part of Ukraine's Western power generation sector.[179] Indeed, the overwhelming majority of the Ukrainian grid has remained linked to Russia through the integrated power system (IPS/UPS), which possesses completely different technical, legal and organisational features than the European system.[180]

Nevertheless, the 'Burshtyn Island' experiment and the future electricity export opportunities acted as incentives for more concrete policy commitments from the Ukrainian authorities through the afore-mentioned "Memorandum of understanding on cooperation in the field of energy between the European Union and Ukraine" in December 2005, in which a clear roadmap for the integration of the EU's regulatory state was laid down.

These commitments were indeed followed by governmental and legislative activity with the overarching goal of making Ukrainian electricity market rules finally *acquis*-compatible. To begin with, an "Energy Strategy to 2030", highlighting the need to integrate the EU market and to expand electricity exports to the EU, was

[177] Hofer (2008), *Die Europäische Union als Regelexporteur*, 158 & 164-165.
[178] IEA, (2006), "Ukraine: Energy Policy Review 2006", 288.
[179] Ibid.
[180] Ibid., 287.

approved by the Cabinet of Ministers in early 2006.[181] Moreover, export rules were made more transparent in order to enable a competitive process to emerge around electricity exports.[182] Yet, the most important issue from the European regulatory point of view remained the major structural problems inherited from the first wave of liberalisation. These began to be addressed with a planed major overhaul of the market design and regulatory state through the draft "Law on the Main Aspects of Functioning of the Electricity Market" (LFEM), which was adopted by the Cabinet of Ministers in 2007.[183] Finally, a Presidential Decree improved the independence of the regulatory authority NERC in 2011.[184]

Subsequently, the EU asserted its position as an energy policy reference model by creating the Energy Community in 2006 with countries from South-Eastern Europe.[185] As defined in the "Energy Community Treaty"[186], this highly institutionalised organization has as a main goal "to create a single regulatory space" in the field of energy, notably to enhance electricity trade between the EU and partner countries.[187] In order to achieve this goal, the "Energy Community Treaty" obliges the partner countries to integrate the relevant EU energy policy *acquis* within a fixed timetable.[188] The institution has a permanent Secretariat, which reviews the adoption of energy *acquis* in each partner country, and possesses a Ministerial Council, which can notably extend the scope of the *acquis* to be implemented by the partner countries.[189] Ukraine joined the Energy Community in 2010 and set up a roadmap as well as an action plan on *acquis* approximation in collaboration with the Secretariat between 2010 and 2011.[190] Ukraine obliged itself to comply with the relevant *acquis*

---

[181] Ibid., 51.
[182] Ibid., 287.
[183] European External Action Service (2010), "Fifth Joint EU-Ukraine Report on Implementation of the EU-Ukraine Memorandum of Understanding on Energy Cooperation during 2010", available online: http://eeas.europa.eu/archives/docs/ukraine/pdf/joint_progress_report5_en.pdf, consulted the 20.05.2017.
[184] Energy Community Secretariat (2013), "ANNUAL IMPLEMENTATION REPORT 2012/2013", Vienna, 76.
[185] Prange-Gstöhl (2009), "Enlarging the EU's internal energy market", 5299.
[186] "THE ENERGY COMMUNITY TREATY", *Official Journal of the European Union*, L198, 20.06.2006, 18-37.
[187] "THE ENERGY COMMUNITY TREATY", Art.2.
[188] Ibid., Art.10.
[189] Ibid., Art.25, 47 & 67.
[190] Energy Community Secretariat (2011), "ANNUAL REPORT ON THE IMPLEMENTATION OF THE ACQUIS UNDER THE TREATY ESTABLISHING THE ENERGY COMMUNITY", Vienna, 154.

on electricity, mainly legislation from the second energy package, by January 2012, with the exception of full market opening to all consumers, which had to be implemented by January 2015.[191]

However, all these formal commitments and declarations did not change much in practice and the reform process launched in the second half of the 2000s did not deliver concrete results for years. Indeed, the first assessments from the Secretariat over Ukraine's compliance with its obligations portrayed a poor regulatory state being "obsolete and requiring urgent reform".[192] To begin with, the single buyer model was breaching "Directive 2003/54/EC" as it did not enable a competitive market to emerge and impeded free customer choice over their electricity supplier.[193] Subsequently, another major bone of contention has been cross-border capacity allocation as Ukraine fails to comply with EU legislation and led the Secretariat to open an infringement procedure against it in 2013.[194]

Additionally, there was also little progress for many years regarding the goal to synchronise the whole Ukrainian grid with the European ENTSO-E grid as the process is still at an exploratory stage. Indeed, while it was estimated in 2011 that the synchronization would take around seven years[195], more recent estimations from a feasibility study held by ENTSO-E from November 2014 until October 2015, foresaw a much longer process, which could take up until 10 years.[196].

It must also be acknowledged that the chaotic political situation, of the second half of the 2000s with internal disputes within the pro-EU camp as well as the comeback to a presidential system in 2010 under Yanukovych, who did follow an opportunistic agenda by adopting an ambiguous position towards EU-policy convergence relatively often, also negatively affected *acquis* approximation.[197]

Nevertheless, as it will be seen in the next section, the externalization of core electricity market-*acquis* has finally started to occur since 2013.

---

[191] Ibid., 17.
[192] Energy Community Secretariat (2013), "ANNUAL IMPLEMENTATION REPORT 2012/2013", 74.
[193] Ibid.
[194] Ibid., 75.
[195] Energy Community Secretariat (2011), "ANNUAL REPORT", 153
[196] Energy Community Secretariat (2015), "ANNUAL IMPLEMENTATION REPORT 2014/2015", Vienna, 204.
[197] Sakwa (2016), *Frontline Ukraine: Crisis in the Borderlands*, 52-53 & 56; Emmanuelle Armadon (2011), "EU-Ukraine Relations: what developments have there been since the election of Viktor Yanukovych?", *Fondation Robert Schuman - European Issues, 214*, *1*-6.

6.2.3 Pivotal years for Ukraine's European future and electricity market reforms

Between 2013 and 2014, major steps were taken with regards to EU market-rule conformity as the long-awaited market reform was finally adopted and the "Association Agreement" signed by the Poroshenko government one month after its assumption of power in July 2014.[198]

To begin with, a major step towards EU *acquis* compatibility was made in October 2013 with adoption of the LFEM more than 15 years after the last major electricity market reform. The LFEM fixes a gradual phasing out of the single buyer model, which will be replaced by a day-ahead market platform and bilateral trading until July 2017.[199] Moreover, the law guarantees third party access, regulates cross-border transmission capacities and plans the set up of an electronic auctioning platform.[200]

Subsequently, Ukraine signed the "Association Agreement" with the EU in July 2014, deepening its relationship with it even further. Indeed, this agreement covers almost all sectors of the Single Market and streamlines the main measures to take in order to be able to join the latter. From an institutional point of view an Association Council, meeting at the ministerial level, is created and given the right to adopt binding decisions.[201] Regarding *acquis* approximation, the "Association Agreement" is much more precise than the PCA as it is written that "Ukraine will carry out gradual approximation of its legislation to EU law".[202] For electricity market liberalisation, the content is also precisely defined with provisions demanding third party access, the establishment of an independent NRA and market prices for electricity as well as compliance with relevant legislation from the second energy package.[203]

---

[198] Energy Community Secretariat (2014), "ANNUAL IMPLEMENTATION REPORT 2013/2014", Vienna, 172.
[199] Ibid.
[200] International Energy Agency (IEA) (2015), "Eastern Europe, Caucasus and Central Asia", *OECD/IEA*, Paris: *IEA Publications*, 343.
[201] "ASSOCIATION AGREEMENT between the European Union and its Member States, of the one part, and Ukraine, of the other part", Art.461.
[202] Ibid., Art.474.
[203] Ibid., Art.269, 273, 277 & Annex XXVII.

In the same vein, the Secretariat of the Energy Community is becoming more and more proactive regarding domestic "law shaping" in Ukraine. Indeed, as in 2011 the third energy package was incorporated in the *acquis* corpus to be implemented by Energy Community members into national law before January 2015, the Secretariat prepared a new third energy package-conform draft "Electricity Market Law" and directly presented it to the Ukrainian Ministry of Energy and Coal Industry in July 2014.[204] The "Electricity Market Law" has been approved by the Parliament in April 2017.[205] The latter fixes pending issues in order to make Ukrainian legislation fully *acquis*-compatible in the field of electricity. Thus, the TSO Ukrenergo will follow the ownership unbundling model laid down in the third energy package and different market aspects, which were non-compliant with EU legislation, will be completed.[206] The Secretariat has been equally involved in the drafting of the "Law on the National Commission for the Regulation of Energy and Utilities", which entered into force in November 2016 and marks a crucial step as it makes the Ukrainian NRA's competences *acquis*-compatible by giving it the necessary independence from the political interest groups.[207]

Finally, the reform process needs to be reframed again within the Ukrainian political context. Indeed, the fact that Poroshenko, the successor of Yanukovych who came into power in 2014, has been a fierce pro-EU oriented oligarch since the early 2000s clearly impacted the reform pace as well.[208]

Although the transposition of the adopted laws in secondary legislation is still ongoing and implementation will take time, Ukraine is finally delivering tangible results in terms of electricity market-*acquis* approximation.

---

[204] Energy Community Secretariat (2015), "ANNUAL IMPLEMENTATION REPORT 2014/2015", 11 & 204.
[205] CMS, "Ukraine: Electricity Market liberalised to meet the EU 3rd Energy Package requirements", 18.04.2017, available online: http://www.cms-lawnow.com/ealerts/2017/04/ukraine-electricity-market-liberalised-to-meet-the-eu-3rd-energy-package-requirements, consulted the 10.06.2017.
[206] Energy Community Secretariat (2016), "ANNUAL IMPLEMENTATION REPORT 2015/2016", Vienna, 160.
[207] Energy Community, "REGULATORY AUTHORITY", available online: https://www.energy-community.org/implementation/Ukraine/REG.html, consulted the 29.06.2017.
[208] Sakwa (2016), *Frontline Ukraine: Crisis in the Borderlands*, 64-65.

6.3 Creating of a domestic ETS, a recent and EU-driven project

Unlike for the electricity sector, emissions trading was a low-priority on the political agenda in Ukraine until recently and it were merely the provisions from the "Association Agreement" which pushed forward Ukraine's plan to establish a national emissions trading market. However, several elements are still lacking to enable the set up of such a market in the short-run and it is uncertain whether legislation will follow soon.

6.3.1 Climate change action in Ukraine: a low priority

From its independence on until the end of the 2000s, Ukraine's commitment to the fight against climate change and carbon emissions has remained very limited.

To start with, Ukraine did not have to implement any specific measures in the 1990s and early 2000s to meet its Kyoto Protocol target goal of not exceeding its GHG emissions compared to the 1990 level as its emissions dropped permanently by more than 50% since 1990 due to structural changes within the post-Soviet economy as well as economic recessions.[209] However, the Ukrainian economy has remained extremely energy intensive with a GHG emissions intensity compared to the GDP level that was estimated to be four times higher than the European average in 2010.[210] Therefore, there is immense potential for emissions reduction. Even though some merely declaratory policy-goals were defined in the second half of the 2000s, this has however, not been high on the policy-agenda until recently,.[211] Indeed, the "Energy Strategy of Ukraine to 2030", which was formulated in 2006 and updated in 2013, aimed at addressing the issue of obsolescent power plants but did not present any clear roadmap or specific targets to be implemented.[212] Thus, the set up of the EU ETS in 2005 did not impact policy-making with regards to decarbonisation and emissions trading.

[209] State Environmental Investment Agency (2014), "MARKET READINESS PROPOSAL Under the Partnership for Market Readiness Programme: UKRAINE", *Partnership for Market* Readiness, 23-24.
[210] Ibid., 26.
[211] ADE (2010), "Evaluation of the European Commission's Cooperation with Ukraine: Final Report", *ADE (Analysis for Economic Decisions),* 57.
[212] State Environmental Investment Agency (2014), "MARKET READINESS PROPOSAL", 41.

6.3.2 The "Association Agreement": enforced proposals lacking a realistic roadmap

The set up of a domestic ETS was first discussed in 2010 but only became concreter with the growing institutionalisation of the relationship with the EU. However, there has been no legislative proposal yet.

Although, a domestic ETS has been under discussion since 2010[213], Ukraine was finally pushed by the EU to commit to a clear roadmap with target deadlines for the implementation of emissions trading at a domestic level. Indeed, according to the "Association Agreement", Ukraine has to implement a domestic ETS based on the EU ETS model within two years.[214] However, the Ukrainian roadmap seems unclear, as the authorities have expressed different objectives and target headlines so far. On the one hand, in the draft "Energy Strategy of Ukraine through 2035" from 2014, it is foreseen to introduce a domestic ETS until 2035 in a third stage, which is preceded by two stages setting up a "carbon tax".[215] On the other hand, the Ministry of Environment issued a draft concept in 2015 for a trading scheme that would be based on the EU ETS and established in 2017 for a four-year pilot phase.[216] Following the ministry's plans, the scheme would be linked with the EU ETS in 2019 in order to avoid problems of liquidity on the small Ukrainian carbon allowance market.[217] These two completely different roadmaps portray an unclear agenda when it comes to climate mitigating action. Moreover, no legislation on emissions trading has been adopted yet.[218]

To briefly summarise this chapter, it can be said that until recently, *acquis* externalization was highly limited in Ukraine. This changed since 2013 with the

---

[213] Preparedness for Emissions Trading in the EBRD Region (PETER), "Preparedness for Emissions Trading in the EBRD Region", available online: http://www.ebrdpeter.info/uploads/media/report/0001/01/57173c6fa42b5056e876770b042c1e96b1f92b35.pdf, consulted the 15.06.2017.

[214] "ASSOCIATION AGREEMENT between the European Union and its Member States, of the one part, and Ukraine, of the other part", ANNEX XXX.

[215] "ENERGY STRATEGY OF UKRAINE through 2035: WHITE BOOK OF UKRAINIAN ENERGY POLICY *SECURITY AND COMPETITIVENESS*", (2014), *draft*, 28, available online: http://www.enercee.net/fileadmin/enercee/images-2016/Ukraine/Energy_strategy_2035_eng.pdf, consulted the 02.06.2017.

[216] International Carbon Action Partnership (ICAP), "Ukraine Plans National ETS for 2017", available online: https://icapcarbonaction.com/fr/news-archive/310-ukraine-plans-national-ets-for-2017, consulted the 20.05.2017.

[217] Ibid.

[218] European Commission, "JOINT STAFF WORKING DOCUMENT: Association Implementation Report on Ukraine", Brussels, 09.12.2016, SWD(2016) 446 final, 12.

adoption of major electricity market reforms. Concerning emissions trading at a domestic level, no tangible *acquis* approximation could be observed so far.

7. Analysis of the findings and theoretical implications for MPE

The findings on Switzerland and Ukraine reflect a mixed picture regarding MPE. Indeed, on the one hand, to a large extent, there is hard evidence of the EU's shaping role of both countries' electricity and emissions trading policies and legislation. Yet, on the other hand contextual and domestic factors, namely the level of market interconnectedness, the nature of the political system, the level of institutionalisation of the bilateral relationship with the EU and the political culture, appear to significantly impact *acquis* approximation in both cases. In this chapter, the findings for both cases will first be analysed. Second, theoretical conclusions for MPE will be drawn.

7.1 Switzerland: A clear case of EU market power with ongoing obstacles

The findings from the first case study on Switzerland, which is a most-likely case and should confirm the MPE theory, are highly interesting as, they partially corroborate the latter by confirming the EU's position as a market power in Switzerland, but also highlight some major mitigating factors to this power.

7.1.1 Market power evidence in the case of Switzerland

On the one hand, the EU demonstrated market power features as Swiss authorities have been, since the mid-1990s attentive to EU legislative changes and showed great willingness to adapt Swiss legislation in a EU-conform way in order to avoid being left out of the European electricity market. This could already be observed at the early stage of the European regulatory process with the adoption of the FAEM in 2000, suggesting an important market power of the EU in the field of electricity towards Switzerland. While this first attempt, was rejected by the citizens in 2002 per referendum, Switzerland finally partially liberalised its electricity market in 2007 through the FESA and adopted important measures defined in EU legislation such as the creation of an independent NRA and a TSO guaranteeing non-discriminatory third party access to the transmission grid. Subsequently, an even clearer pattern of EU-conform rule adoption could be observed in the case of the EU ETS as Switzerland

completely redesigned its ETS in 2011 in order to be able to integrate the European market.

The size and importance of the European electricity and carbon emissions markets was paramount in the Swiss case. Indeed, market access to the European electricity market has been crucial regarding security of supply and given the fact that Switzerland is a hub for Western European electricity trade. This has become even more important with the Swiss decision to base its energy mix increasingly on RES through the "Energy Strategy 2050". Indeed, as argued by Swissgrid, this strategy makes the integration of the EU electricity market even more important for Switzerland as a higher share of RES will also mean less reliability within the Swiss grid and higher interdependence with the European one.[219] Furthermore, preventing Swiss companies from facing competitive disadvantage was another major concern in Switzerland, both concerning the European electricity and ETS markets.

Therefore, the relative market size and evolving regulatory state within the EU have been important explaining variables of the EU's market power in Switzerland. Interest contestation could also be identified as an important characteristic of EU market power, however within the domestic political arena.

7.1.2 Yet, incomplete acquis approximation

On the other hand, the picture is not as clear-cut as it was initially expected. Indeed, electricity market liberalisation *acquis* could not be fully externalised and, more than 20 years after the European electricity market project was launched, some major features such as the complete opening of the electricity market to competition are not in place in Switzerland.

To begin with, the Swiss voters rejected the liberalisation of the electricity market in 2002 as domestic interest groups, opposed to the liberalisation project, used the tools given by the semi-direct democratic system to undermine the parliamentary consensus over *acquis* approximation. In the last years, this political tool has been equally impacting *acquis* externalization as the facultative referendum is still hanging as a Damocles sword over the second step of complete electricity market opening,

[219] Swissgrid (2012), "Integration der Schweiz in das europäische Stromnetz: Für eine sichere und wirtschaftlich Stromversorgung", available online: https://www.swissgrid.ch/dam/swissgrid/company/publications/de/Integration_CH_EU_Stromnetz_de.pdf, consulted the 05.05.2017.

which has not been scheduled by legislation yet. This retard, was also motivated by the fact that the adoption of the "Energy Strategy 2050" was not guaranteed until May 2017, when the Swiss citizens finally validated the EnA per referendum.

Subsequently, the initiative "against mass immigration" accepted in February 2014 also put under great strain the whole institutional bilateral structure, which was set up in the early 2000s between the EU and Switzerland and with it further integration of Switzerland within the EU electricity and emissions trading markets. Indeed, after the approval by the Swiss voters of this initiative demanding the set up of quotas on EU immigration, the EU significantly paced down its cooperation with Switzerland, as the initiative was potentially breaching the AFMP and as a consequence jeopardizing the whole bilateral cooperation structure between the EU and Switzerland (cf. guillotine clause discussed in chapter seven).[220] Finally, the adoption of a watered down form of implementation of the initiative by the parliament in December 2016, ensured the respect of the principle of free movement of persons and normalised the bilateral relationship.[221]

Finally, the lack of a comprehensive institutional agreement has decisively blocked the conclusion of a bilateral electricity agreement which should ensure Switzerland more legal certainty regarding its participation within the European electricity market. Moreover, the linkage of the Swiss and European ETS has not been realised neither for this reason although an agreement was already reached in January 2016.

7.1.3 Uncertainty regarding the EU's market powers' strength to overcome mitigating factors

Certainly, this rigid position of the EU, conditioning the conclusion of any new bilateral agreement to greater institutionalization of the overall relationship with Switzerland, is an attempt to exert market power. Additionally, the strain that is put on the Swiss authorities by the EU through the exclusion of it from institutional structures and from unhindered access to the EU market shows the increasing market

[220] Solenn Paulic, "L'Union européenne desserre l'étau sur la libre circulation", 22.12.2016, *Le Temps*, available online: https://www.letemps.ch/suisse/2016/12/22/lunion-europeenne-desserre-letau-libre-circulation, consulted the 01.06.2017
[221] Ibid.

power the EU is exerting on its partners. Yet, it is less certain whether this will be successful and at what pace negotiations will evolve.

To conclude the analysis of the findings for Switzerland it can be said that MPE could be verified partially, as core EU *acquis* in the field of electricity and emissions trading was adopted in Switzerland and as the EU globally shaped Swiss energy policy. Nonetheless, the possibility to use referenda against agreed legislation and the absence of an institutional agreement on electricity as well as the lack of an overall framework agreement between Switzerland and the EU have created great legal uncertainty resulting in incomplete *acquis* approximation.

7.2 Late but tangible market power exerted towards Ukraine

The findings for Ukraine, our least-likely case, are noteworthy as well. Indeed, while for long Ukraine's commitments towards EU membership and the related promises of *acquis* adoption remained of a rhetorical nature, *acquis* externalization has occurred in recent years. Indeed, substantial legislative reforms of the electricity sector began to be adopted from 2013 onwards due to domestic factors and institutional developments within the bilateral relationship with the EU. The situation has been more critical regarding the domestic ETS, as a lack of shared political culture has limited rapid legislative developments so far.

7.2.1 Early EU-regulatory stage: absence of tangible market power

The EU did not appear as a market power towards Ukraine until the mid-, perhaps late 2000s. This is explained by the lack of initial interconnectedness to the EU electricity market and the absence of equal values on climate change mitigation action with regards to emissions trading regulation. Additionally, the loose institutional relationship with the EU and the domestic political system also explain the absence of *acquis* approximation.

To begin with, it could be noticed that, until the mid-2000s, EU market rules played no role at all in the attempted electricity market liberalisation process put into motion by president Kuchma in the mid-1990s. The reversal of the incomplete market liberalisation in 2004 per presidential decree, demonstrates the lack of influence of the

EU's regulatory order in Ukraine, as it appeared that the second energy package did not impact domestic policy-developments. Moreover, as demonstrated by Hofer, the re-centralization measures aimed at restraining the oligarchs' power by enhancing the government's influence over the electricity sector.[222] This portrays how vulnerable the presidential system made Ukraine's political system towards fluctuations within the president's agenda.

Further, Ukraine's market access to the EU electricity market has remained very limited. Although in 2003 the "Burshtyn Island" was synchronised with the UCTE grid, progress of the planed complete interconnection of the Ukrainian grid has been very slow as the exploratory phase has been barley completed so far. These uncertainties regarding grid interconnection with the EU undoubtedly affected the reform pace in Ukraine and thus the EU's market power.

Subsequently, the loosely institutionalised relations between the EU and Ukraine until 2005, perhaps 2010, equally negatively impacted EU energy policy approximation. This is notably reflected within the PCA, which barely specified regulations to be adopted,

Finally, no rule approximation with the EU ETS regulations was envisaged in Ukraine until recently as climate change mitigation action was by far not a national priority.

7.2.2 Acquis approximation patterns and tangible results emerging at last

In the last years, EU *acquis* approximation could finally be observed as the EU slowly build up the necessary conditions for the deployment of its market power in Ukraine from the mid-2000s on. This remarkable exercise of market power within the least-likely case Ukraine can be mainly explained through structural changes within the institutional relationship between both partners and, to a lesser extent, by changes within the political system.

To start with, it could be demonstrated that the weakening of the president's power which resulted from the 'Orange Revolution' in 2004, was supported by a majority of oligarchs with the objective of guaranteeing their grip on the political process and securing minimum *acquis* approximation in order to attract foreign

[222] Hofer (2008), *Die Europäische Union als Regelexporteur*, 153-157.

investors and enlarge export opportunities.[223] After a chaotic period and a comeback to the presidential system under Yanukovych, these reforms were finally consolidated in 2014 under the new president Poroshenko, a firmly pro-EU oligarch. Due to the changes within the political system giving the parliament more power, the country is less vulnerable to drastic policy changes, which could affect *acquis* externalization in the past.

Subsequently, two main developments within the EU-Ukraine relationship led to EU-rule adoption and confirmed some EU market power at a later stage: the conclusion of the "Association Agreement" and the entry of Ukraine within the Energy Community. First, the "Association Agreement" substantially stabilised bilateral relations and secured long-term integration within the Single Market as clear timely framed commitments of *acquis* adoption were formulated and an institutional structure was set up. Second, with the Energy Community, the EU is increasingly asserting itself as a market power in the field of energy policy. Indeed, through the Energy Community Secretariat, the EU is more and more closely monitoring the Ukrainian legislative process and even pre-writing *acquis*-conform legislation for Ukraine. This was notably perceivable regarding the electricity market reforms, which were adopted between 2013 and early 2017 in Ukraine. This remarkable influence of the EU on the Ukrainian legislative process is a genuine demonstration of market power and shows that, once the institutional relationship with Ukraine became more precise, reform process was substantially accelerated.

Finally, the findings demonstrate weak legal approximation regarding the set up of a Ukrainian EU-conform ETS as the strategy is unclear and no tangible results have been implemented yet. Given that the goal to set up a national ETS has mainly been imposed by the EU through the "Association Agreement" and that climate change mitigation has consistently been a low priority for Ukraine, it can be argued that the absence of shared values on decarbonisation has been mitigating *acquis* approximation.

[223] Melnykovska & Schweickert (2008), "Bottom-up or top-down", 450-456.

7.3 Theoretical implications: domestic context and institutional relations with the EU matter

With regards to MPE, my findings and subsequent analysis have important implications as they show that although the theory is verified to a certain extent, it needs to be sharpened as it is qualified by certain factors, which are not taken into account by the three MPE characteristics of relative market size, regulatory capacity and interest contestation. Indeed, four intervening variables have been identified as affecting the extent to which MPE is able to account for energy *acquis* externalization: the level of interconnectedness with the EU market, the political culture, the nature of the political system and the level of institutionalization of the EU's bilateral relations with a third country. The related empirical findings, described earlier are summarised in Table 7.1. Finally, my findings demonstrated that the MPE characteristic of interest contestation should be broadened to the domestic political arena.

Table 7.1 *Variables affecting MPE's explanatory strength*

Intervening Variables	*Switzerland* a. Electricity market b. ETS	*Ukraine* a. Electricity market b. ETS
Level of market interconnectedness	a. High b. Does Not Apply (DNA)	a. Low b. Does Not Apply (DNA)
Level of similarity between domestic and EU norms	a. Moderate b. High	a. Moderate b. Low
Constitutional possibility to interfere within domestic consensus over acquis approximation	a+b. Yes	a+b. Yes (until 2006 & 2010-14)
Level of institutionalization of EU-third country relations	a. Low b. Low	a. Low (until 2010) b. Low (until 2014)

To begin with, the level of interconnectedness with the EU market could be identified as a crucial factor influencing the ability of MPE to explain *acquis* approximation in the field of electricity in Switzerland and Ukraine. Indeed, the fact that electricity trade patterns between the EU and Switzerland were already highly developed in the mid-1990s guaranteed that the regulatory changes and the resulting creation of the European electricity market impacted domestic policy-making from the very beginning and resulted in partial regulatory approximation from 2007 on. This was by far not the case in Ukraine as the electricity market completely lacked interconnection with the European grid until 2003. Moreover, electricity trade interests have been hampered for long by a slow assessment process of complete grid synchronization, only planed for 2025. This impeded the effective deployment of EU market power from the mid-1990s on. As a result the findings from the "Europeanization beyond Europe" literature discussed in chapter three are verified, as market interconnection is an important factor impacting *acquis* externalization in third countries. It has to be acknowledged, however, that this variable was not relevant for the EU ETS as market interconnection can only occur once the regulatory framework is in place and has been recognised by the EU as such.

Subsequently, the domestic political culture, more precisely the level of similarity between domestic and EU norms, could be identified as impacting the explanatory strength of MPE, notably regarding climate change mitigation action. Indeed, while a domestic ETS was rapidly implemented in Switzerland and made *acquis*-conform, Ukraine has only launched an emissions trading market project recently without any tangible results so far. This can mainly be explained by the fact that regarding, the goal of decarbonisation, Switzerland and the EU already shared a similar rationale since the late 1990s as they both committed to reduce their GHG emissions by 8% compared to the 1990 level under the Kyoto protocol.[224] Meanwhile, climate change mitigation has never been a top priority in Ukraine policy-making. Concerning electricity market liberalisation, the similarity between domestic and EU norms can be qualified as moderate. Indeed, although the national authorities have been committed to EU norms of market liberalisation in the Swiss case, the fact that influent interest groups opposed these, clearly influenced *acquis* approximation. In Ukraine as well the fact that in the 1990s certain economic circles did not share EU

[224] "KYOTO PROTOCOL TO THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE", Kyoto, 11.12.1997, United Nations, *Treaty Series, 2303*, 255-256.

norms on liberalisation, fearing the loss of local monopolies, participated in the lack of *acquis* approximation at that time. These findings on the relevance of norm similarity for *acquis* externalization partially challenge the findings within the "Europeanization beyond Europe" literature discussed in chapter three.

Further, the nature of the political system, more specifically the constitutional possibility given to stakeholders to interfere within the domestic consensus over *acquis* approximation, also acted as an important filter of MPE. Indeed, both the semi-direct democratic system in Switzerland and the presidential system in Ukraine made it possible to stakeholders to affect *acquis* approximation. First, the optional referendum and the right of initiative, guaranteed by the Swiss constitution[225], could be identified as jeopardizing the parliamentarian consensus reached upon *acquis* approximation. As observed, these democratic tools hindered electricity market reforms several times and impacted negatively sectorial and institutional cooperation with the EU. This variable also applies to a lesser degree for Ukraine, where the president had extensive power prerogatives until 2006 and from 2010 to 2014, which resulted in important policy shifts moving Ukraine's regulatory order away from EU norms.

The last intervening variable, which strongly impacted effective EU regulatory transfer both in Switzerland and Ukraine is the level of institutionalization of the bilateral relations between the EU and a given third country. Indeed, in the Swiss case, the absence of a framework agreement governing issues such as dynamic *acquis* integration, homogeneous interpretation of existing agreements and dispute settlement, substantially reduced complete *acquis* externalization.[226] This has not only hindered the linkage of the Swiss and EU emissions trading markets albeit an agreement was reached more than a year ago, but is also blocking the electricity agreement under negotiation since 2007. The latter is essential for Switzerland to ensure legal certainty regarding access to the European electricity market and the recognition of regulatory compatibility with EU standards.[227] Therefore, this uncertain sectorial and institutional framework conditions are negatively affecting further *acquis* externalization in Switzerland. In the Ukrainian case, the institutionalisation of

[225] Federal Constitution of the Swiss Confederation, RS 101, 18.04.1999, Art. 139 & 141.

[226] For the demands of the EU regarding the institutional framework agreement, see: Council of the European Union, "Negotiating mandate for an EU-Switzerland institutional framework agreement", Brussels, 06.05.2014, 9525/14 (OR. en), PRESSE 267, 1.

[227] IEA (2012), "Energy Policies of IEA Countries: Switzerland", 95-100.

cooperation with the EU in the field of energy policy through its participation in the Energy Community since 2010 and more broadly through the "Association Agreement" signed in 2014, considerably fostered *acquis*-conform electricity market reforms. Indeed, through clearly defined roadmaps, genuine market-access prospects and well-developed institutional structures, the EU is more and more directly shaping the Ukrainian regulatory order. Therefore, it can be argued that the more institutionalised and legally defined the cooperation and *acquis* integration is defined with a third country, the more MPE can provide a satisfying theoretical tool to explain *acquis* externalization.

Finally, my findings demonstrate that while interest contestation must indeed be considered as a characteristic of EU market power, the domestic political arena needs to be taken into account. Indeed, in both cases pro- and anti-*acquis* approximation interest groups were active within the domestic political arena, be it the trade unions in Switzerland or oligarchic clans in Ukraine. Damro only acknowledges the role of foreign interest groups in the European political arena.[228] Therefore, I suggest broadening the scope of the interest contestation characteristic to the domestic political arena.

[228] Damro (2012), "Market power Europe", 689.

8. Conclusion

The European Union's market and regulatory order are indisputably key attributes of its power. Yet, the answer to our initial question whether the EU can be characterised as a market power in the area of energy policy is a qualified yes. Although, it was discovered that the EU shaped national energy policy in both case studies, the length and incomplete nature of this process both in Switzerland and Ukraine have demonstrated that the EU's market power is filtered by factors related to domestic structures and culture as well as to the EU's institutional and economic links with third countries. This has far-reaching implications for MPE as it provides the theory with valuable empirical insight that will help to make it more resilient when applied in practice.

To begin with, in chapter four, the potential market power as defined by MPE could be identified as strong as an ever more complete regulatory state has been designed regarding central objectives of EU energy policy, namely electricity market integration and decarbonisation through emissions trading. First, a common electricity market was created gradually through the liberalisation of the Member States' electricity markets throughout the three energy packages (1996, 2003, 2009). This liberalisation process was also accompanied by the establishment of a strong "regulatory capacity" with the creation of ACER, further EU-wide coordination between TSO's through ENTSO-E and clear rules on unbundling of transmission networks. Second, it was displayed that an emissions trading market and strong "regulatory capacity" has been in place since 2005 with the EU ETS, which was reformed in 2009 and 2015. As for the MPE characteristic of interest contestation, its assessment was hindered by the difficulty to access necessary information. This difficulty should be taken into account in further empirical studies of MPE. Nonetheless, it could be concluded that according to MPE, the EU's market power should be extensive.

Subsequently, it was assessed in chapter five and six whether EU energy *acquis* approximation occurred in Switzerland and Ukraine respectively. Both case studies provided highly interesting insides on MPE's strength to account for the EU's ability to externalise its regulatory order in its neighbourhood.

In the Swiss case it was found that overall, the EU's market power has been substantial regarding electricity liberalisation and emissions trading. Indeed, since the beginning of EU energy policy-making, *acquis* approximation has always remained high on the Swiss political agenda as access to both the European electricity and carbon emissions markets was crucial for Switzerland in terms of trade, competitiveness and security of supply (for electricity only). For the Swiss ETS, which was made *acquis* compatible, the fact that both partners followed similar goals in terms of climate change mitigation played a crucial role as well.

Nonetheless, regarding electricity market liberalisation various obstacles have made EU *acquis* approximation more challenging than initially expected by this most-likely case. Indeed, *acquis* approximation regarding the electricity market was first stopped in 2002 per referendum and has not been achieved so far as the complete market liberalisation has been postponed several times. Additionally, legislative reform aiming, *inter alia*, at ensuring complete regulatory compatibility with the third energy package, has been stalled as well. The principal causes for this incomplete *acquis* externalization lies within the direct-democratic system and the absence of a comprehensive institutional agreement with the EU, which created an uncertain legal and political environment. Under the present circumstances of a consistent opposition to further integration of Switzerland within the European regulatory order by the Swiss Peoples Party (currently the strongest party in Switzerland), it remains uncertain whether these structural problems will be resolved soon.

In the Ukrainian case, it could be observed that the EU's role as a market power was only perceivable from the mid-2000s on, notably due to the absence of market interconnection in the area of electricity. First, the EU did not play any role within the country's first wave of market liberalisation in the mid-1990s, which was in fact not *acquis*-compatible. Second, from the mid-2000s until 2013 followed a long phase of declaratory pro-EU commitments globally lacking substance and effective implementation. However, in the last years the EU has been able to externalise its energy *acquis* more and more effectively, notably through the creation of the Energy Community and the conclusion of an Association Agreement with Ukraine. Eventually, the EU was therefore able to externalise its *acquis* given that fundamental electricity market reforms were adopted between 2013 and early 2017. For emissions trading it was found that the absence of shared values on decarbonisation, highly deteriorated the EU's market power.

These findings lead to the conclusion that while MPE provides a good framework to analyse the EU's ability to externalise its regulatory order in neighbouring countries, multiple variables act as filters to the deployment of market power. Indeed, four intervening variables need to be considered when applying MPE in practice in order to make it well-suited for non-trade areas and more resilient in general: the level of market interconnectedness with the third country, the proximity of this country's political culture with EU norms, the nature of the political system of that country and the level of institutionalization of the country's relationship with the EU. Additionally, it could be noted that the scope of MPE characteristic of interest contestation, which already comprises foreign interest groups, should be enlarged to the domestic political arena as it was observed that domestic interest groups merely interact in the national political arena. While, this thesis provides an interesting empirical study of MPE, further research is needed to solidify the afore-discussed findings. Indeed, this study should only be the starting point of further empirical testing of MPE, especially in other non-trade areas, as the empirical research potential remains immense and is likely to increase with the ongoing regulatory expansion the EU is experiencing.

Finally, the findings not only have theoretical implications but are also of relevance for the current policy debate. First, in the context of the present "Brexit" negotiations, the United Kingdom (UK) should consider the long-term consequences of leaving the EU's regulatory framework. Indeed, due to the fact that the Single Market acts as a magnetic force and is likely to evolve further, the costs of leaving this framework will become increasingly high. Especially with regards to energy security, maintaining close links with the European regulatory order will become vital for the UK. As a consequence, the UK should sustain its ties with the EU and seek to achieve an agreement where its own market-related policies and regulations remain closely linked to the EU ones. Second, the findings suggest that the EU should concentrate on the development of its Single Market and regulatory capacity in order to shape third countries' regulatory order instead of focusing solely on the diffusion of norms through conditionality and socialization. Yet, norm compatibility still matters as a factor of effective rule-transfer as observed in our case studies, notably for climate change mitigation policies. Second, in order to enable itself to fully deploy its market power, the EU should institutionalise further its sectorial and global relations with key partner countries and facilitate the development of market linkages. Indeed,

the relevance of formal EU borders is diminishing as the EU is creating larger functional sectorial entities. The planed reform of the Energy Community, which foresees the set up of a Court of Justice able to fine members for non-compliance with their deadlines of *acquis* implementation, is a encouraging example for the development of a structured and sectorial-tailored market power-friendly environment.[229] Institutionalizing its relationship with third countries is especially important given the fact that the EU's regulatory order is continuously modified. Institutional frameworks ensuring dynamic *acquis* approximation and ongoing cooperation with partner countries are therefore crucially needed if the EU wants to enshrine further its position as a globally assertive market power.

[229] Conclusions from the High Level Reflection Group issued in June 2014. In Energy Community Secretariat (2014), "ANNUAL IMPLEMENTATION REPORT 2013/2014", 23-24.

9. Bibliography

Primary Sources

"Agreement between the European Economic Community and the Swiss Confederation", 22.07.1972, *Official Journal*, L300 , 31.12.1972, 189-280.

"Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons - Final Act - Joint Declarations", *Official Journal*, L114, 30.04.2002, 6-72.

"ASSOCIATION AGREEMENT between the European Union and its Member States, of the one part, and Ukraine, of the other part", *Official Journal of the European Union,* L161, 29.05.2014, 3-2137.

Barroso, José Manuel, "Lettre de la Commission de l'UE à la Suisse", Bruxelles, 21.12.2012, PRES (2012), 1548156, available online: https://www.eda.admin.ch/content/dam/dea/de/documents/eu/Brief-BXL-CH-20121221_de.pdf, consulted the 17.06.2017.

Case "Entreprises Electriques Fribourgeoises (EEF) contre Watt/Migros" (ATF 129 II 497), 17.06.2003.

Commission of the European Communities, "The internal energy market. Commission working document", COM (88) 238 final, Brussels, 02.05.1988, 1-88.

"COMMISSION REGULATION (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management", *Official Journal of the European Union*, 25.07.2015, L197, 24-72.

Council of the European Union, "Council conclusions on a homogeneous extended single market and EU relations with Non-EU Western European countries", General Affairs Council meeting, Brussels, 16.12.2014, 1-8.

Council of the European Union, "Council conclusions on EU relations with EFTA countries", 3060th GENERAL AFFAIRS Council meeting Brussels, 14.12.2010, 1-8.

Council of the European Union, "Draft Council conclusions on EU relations with EFTA countries", Brussels, 05.12.2008, 16651/1/08 REV 1, 1-8.

Council of the European Union, "Council conclusions on EU relations with the Swiss Confederation", PRESS RELEASE 93/17, 28.02.2017, available online: http://www.consilium.europa.eu/press-releases-pdf/2017/2/47244655317_en.pdf, consulted the 01.06.2017.

Council of the European Union, "Negotiating mandate for an EU-Switzerland institutional framework agreement", Brussels, 06.05.2014, 9525/14 (OR. en), PRESSE 267, 1-2.

Council of the European Union, "3213th Council meeting: Transport, Telecommunications and Energy", Brussels, 20.12.2012, 17591/12, PRESSE 523 PR CO 76, 1-36.

"DIRECTIVE 96/92/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 December 1996 concerning common rules for the internal market in electricity", *Official Journal of the European Communities*, L27, 30.01.1997, 20-29.

"DIRECTIVE 2003/54/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC", *Official Journal of the European Communities*, L 176, 15.07.2003, 37-55.

"Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC", *Official Journal of the European Union*, L 275, 25.10.2003, 32-46.

"DIRECTIVE 2009/72/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC", *Official Journal of the European Union*, L 211, 14.08.2009, 55-93.

"DIRECTIVE 2009/29/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community", *Official Journal of the European Union*, L 140, 05.06.2009, 63-87.

"Energy Act", FF 2016, 30.09.2016, 7469-7518.

Energy Community Secretariat (2011), "ANNUAL REPORT ON THE IMPLEMENTATION OF THE ACQUIS UNDER THE TREATY ESTABLISHING THE ENERGY COMMUNITY", Vienna, 1-179.

Energy Community Secretariat (2013), "ANNUAL IMPLEMENTATION REPORT 2012/2013", Vienna, 1-222.

Energy Community Secretariat (2014), "ANNUAL IMPLEMENTATION REPORT", Vienna, 1-207.

Energy Community Secretariat (2015), "ANNUAL IMPLEMENTATION REPORT 2014/2015", Vienna, 1-248.

Energy Community Secretariat (2016), "ANNUAL IMPLEMENTATION REPORT 2015/2016", Vienna, 1-191.

Energy Community, "REGULATORY AUTHORITY", available online: https://www.energy-community.org/implementation/Ukraine/REG.html, consulted the 29.06.2017.

"ENERGY STRATEGY OF UKRAINE through 2035: WHITE BOOK OF UKRAINIAN ENERGY POLICY *SECURITY AND COMPETITIVENESS*", (2014), *draft*, 1-36, available online: http://www.enercee.net/fileadmin/enercee/images-2016/Ukraine/Energy_strategy_2035_eng.pdf, consulted the 02.06.2017,.

European Commission, "Commission welcomes Ukraine in Energy Community", 24.09.2010, available online: http://europa.eu/rapid/press-release_IP-10-1173_en.htm, consulted the 05.05.2017.

European Commission, "COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS: A policy framework for climate and energy in the period from 2020 to 2030", Brussels, 22.1.2014, COM(2014) 15 final, 1-18.

European Commission, "International carbon market", available online: https://ec.europa.eu/clima/policies/ets/markets_en, consulted the 26.05.2017.

European Commission, "JOINT STAFF WORKING DOCUMENT: Association Implementation Report on Ukraine", Brussels, 09.12.2016, SWD(2016) 446 final, 1-14.

European Commission, "Statement by Jean-Claude Juncker, President of the European Commission, on the vote in the Dutch Senate on the ratification of the Association Agreement between the European Union and Ukraine", 30.05.2017, available online: http://europa.eu/rapid/press-release_STATEMENT-17-1461_en.htm, consulted the 02.06.2017.

European External Action Service (2010), "Fifth Joint EU-Ukraine Report on Implementation of the EU-Ukraine Memorandum of Understanding on Energy Cooperation during 2010", available online: http://eeas.europa.eu/archives/docs/ukraine/pdf/joint_progress_report5_en.pdf, consulted the 20.05.2017.

Eurostat (2016), "The EU in the World: 2016 Edition", Luxembourg, *Publication Office of the European Union*, 1-179.

"Federal Act on Cartels and other Restraints of Competition", RS 251, 06.10.1995, 1-22.

"Federal Act on the Electricity Market", FF 2000, 15.12.2000, 5761-5773.

"Federal Act on the Reduction of CO_2 Emissions (CO_2 Act)", RS 641.71, 08.10.1999, 1-12.

"Federal Act on the Reduction of CO_2 Emissions (CO_2 Act)", RS 641.71, 23.12.2011, 1-14.

"Federal Electricity Supply Act", RS 734.7, 23.03.2007, 1-18.

Federal Chancellery, "Votation populaire du 22.09.2002", available online: https://www.admin.ch/ch/f/pore/va/20020922/index.html, consulted the 01.06.2017.

Federal Constitution of the Swiss Confederation, 18.04.1999, RS 101, 1-80.

Federal Council, "Botschaft zum Bundesgesetz über den Um- und Ausbau der Stromnetze (Änderung des Elektrizitätsgesetzes und des Stromversorgungsgesetzes)", FF 16.035, 13.04.2016, 3865-3946.

Federal Council, "Bundesrat erteilt Verhandlungsmandat für Verknüpfung mit EU-Emissionshandel", 16.12.2009, available online https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-30717.html, consulted the 15.05.2017.

Federal Council, "Conférence de presse du Conseil fédéral du 21.5.2017", available online: https://www.admin.ch/gov/fr/accueil/documentation/conferences-de-presse/2017/5/21_05_2017_1961.html, consulted the 15.06.2017.

Federal Council, "La présidente de la Confédération, Doris Leuthard, rencontre Jean-Claude Juncker, le président de la Commission européenne, à Bruxelles", 06.04.2017, available online: https://www.admin.ch/gov/fr/accueil/documentation/communiques/flux-rss/par-theme/communiques-de-presse-et-discours.msg-id-66300.html, consulted the 01.06.2017.

Federal Council, "Le Conseil fédéral souhaite reporter l'ouverture complète du marché de l'électricité", 04.05.2016, available online: https://www.admin.ch/gov/fr/accueil/documentation/communiques.msg-id-61608.html, consulted the 15.05.2017.

Federal Council, "Message concernant la loi sur le marché de l'électricité" (LME)", FF 99.055, 07.06.1999, 6646-6740.

Federal Council, "Message relatif à la modification de la loi sur les installations électriques et à la loi fédérale sur l'approvisionnement en électricité", FF 04.083, 03.12.2004, 1493-1566.

Federal Council, "Message relatif au premier paquet de mesures de la Stratégie énergétique 2050 (Révision du droit de l'énergie) et à l'initiative populaire fédérale «Pour la sortie programmée de l'énergie nucléaire (Initiative ‹Sortir du nucléaire›)»", FF 13.074, 04.09.2013, 6771-6974.

Federal Department for the Environment, Transport, Energy and Communications - Federal Office of Energy (2010), "AG Unabhängigkeit / schweizerische Beherrschung swissgrid AG: Schlussbericht", 1-32.

Federal Department for the Environment, Transport, Energy and Communications - Federal Office for the Environment (2016), "Linking the Swiss and EU emissions trading schemes", available online: https://www.bafu.admin.ch/bafu/en/home/topics/climate/info-specialists/climate-

policy/emissions-trading/linking-the-swiss-and-eu-emissions-trading-schemes.html, consulted the 10.06.2017.

Federal Department for the Environment, Transport, Energy and Communications - Federal Office for the Environment, "Revision CO2-Gesetz: Auswertung der Vernehmlassung", 30.04.2009, 1-50.

Federal Department for the Environment, Transport, Energy and Communications - Federal Office for the Environment (2013), "Système d'échange de quotas d'émission SEQE", Bern: FOEN, 1-73.

Federal Department for the Environment, Transport, Energy and Communications - Federal Office of Energy (2016), "Rapport sur les résultats: Consultation concernant l'arrêté fédéral relatif à la deuxième étape de l'ouverture totale du marché de l'électricité", 1-23.

Federal Department of Foreign Affairs - Directorate for European Affairs (2015), "Strom", available online: https://www.eda.admin.ch/content/dam/dea/de/documents/fs/02-FS-Strom_de.pdf, consulted the 01.06.2017.

Federal Department of Foreign Affairs - Directorate for European Affairs (2017), "Politique européenne de la Suisse", https://www.eda.admin.ch/content/dam/dea/fr/documents/folien/Folien-Europapolitik_fr.pdf, consulted online on 03.06.2017.

International Carbon Action Partnership (ICAP) (2016), "Emissions Trading Worldwide: International Carbon Action Partnership (ICAP) Status Report 2016", Berlin: ICAP, 1-72.

International Energy Agency (IEA) (2006), "Ukraine: Energy Policy Review 2006", *OECD/IEA*, Paris: *IEA Publications*, 1-379.

International Energy Agency (IEA) (2007), "Energy Policies of IEA Countries: Switzerland 2007 Review", *OECD/IEA*, Paris: *IEA Publications,* 1-121.

International Energy Agency (IEA) (2012), "Energy Policies of IEA Countries: Switzerland 2012 Review", *OECD/IEA*, Paris: *IEA Publications,* 1-136.

International Energy Agency (IEA) (2015), "Eastern Europe, Caucasus and Central Asia"*, OECD/IEA*, Paris: *IEA Publications*, 1-470.

"KYOTO PROTOCOL TO THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE", Kyoto, 11.12.1997, United Nations, *Treaty Series, 2303*, 162-256.

"Law of Ukraine 'on Electric Power Industry'", 575/97-VR, 16.10.1997.

"MEMORANDUM OF UNDERSTANDING on cooperation in the field of energy between the European Union and Ukraine", *Mission of Ukraine to the European Union,* available online: http://mfa.gov.ua/mediafiles/sites/ukraine-eu/files/Ukraine-EU_MOU_in_energy_2005.pdf, consulted the 01.06.2017.

"Partnership and Cooperation Agreement between the European Communities and their Member States, and Ukraine", *Official Journal of the European Union,* L 49, 19.02.1998, 3-39.

Paulic, Solenn, "L'Union européenne desserre l'étau sur la libre circulation", 22.12.2016, *Le Temps*, available online: https://www.letemps.ch/suisse/2016/12/22/lunion-europeenne-desserre-letau-libre-circulation, consulted the 01.06.2017.

"REGULATION (EC) No 713/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators", *Official Journal of the European Union*, L 211, 14.08.2009, 1-14.

"REGULATION (EC) No 714/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003", *Official Journal of the European Union*, L 211, 14.08.2009, 15-35.

"REGULATION (EU) No 1227/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2011 on wholesale energy market integrity and transparency", *Official Journal of the European Union*, L 326, 08.12.2011, 1-16.

State Environmental Investment Agency (2014), "MARKET READINESS PROPOSAL Under the Partnership for Market Readiness Programme: UKRAINE", *Partnership for Market Readiness*, 1-93.

Swissgrid (2012), "Integration der Schweiz in das europäische Stromnetz: Für eine sichere und wirtschaftlich Stromversorgung", available online: https://www.swissgrid.ch/dam/swissgrid/company/publications/de/Integration_CH_EU_Stromnetz_de.pdf, consulted the 05.05.2017.

Swissgrid (2015), "Contributions to the Market Design for the Swiss Energy Strategy 2050", *Swissgrid Ltd*, 1-67.

Swiss Federation of Trade Unions (SFTU), "L'ouverture du marché de l'électricité met la sécurité de l'approvisionnement en danger: Arrêté fédéral sur l'ouverture du marché de l'électricité", 08.10.2014, available online: http://www.uss.ch/themes/services-publics/article/details/louverture-du-marche-de-lelectricite-met-la-securite-de-lapprovisionnement-en-danger/, consulted the 15.05.2017.

"THE ENERGY COMMUNITY TREATY", *Official Journal of the European Union*, L 198, 20.06.2006, 18-37.

Zimmermann, Adrian (2001), "La sécurité de l'approvisionnement ne doit pas être négligemment mise en danger: Non à la Loi sur le marché de l'électricité (LME)", *Swiss Federation of Trade Unions (SFTU), 14*, 1-25.

Secondary Sources

ADE (2010), "Evaluation of the European Commission's Cooperation with Ukraine: Final Report", *ADE (Analysis for Economic Decisions),* 1-111.

Armadon, Emmanuelle (2011), "EU-Ukraine Relations: what developments have there been since the election of Viktor Yanukovych?", *Fondation Robert Schuman - European Issues, 214*, *1*-6.

Bach, David & Abraham L. Newman (2007), "The European regulatory state and global public policy: micro-institutions, macro-influence", *Journal of European Public Policy", 14*(6), 827-846.

Bartle, Ian (2006), "Europeans outside the EU: Telecommunications and Electricity Reform in Norway and Switzerland", *Governance: An International Journal of Policy, Administration, and Institutions, 19*(3), 407–436.

Bradford, Anu (2012), "The Brussels Effect", *Northwestern University Law Review, 107*(1), 1-68.

Buchan, David & Malcolm Keay (2015), *Europe's Long Energy Journey: Towards an Energy Union?*, Oxford: Oxford University Press, 1-224.

CMS, "Ukraine: Electricity Market liberalised to meet the EU 3rd Energy Package requirements", 18.04.2017, available online: http://www.cms-lawnow.com/ealerts/2017/04/ukraine-electricity-market-liberalised-to-meet-the-eu-3rd-energy-package-requirements, consulted the 10.06.2017.

Cordero Martínez, Fernando (2014), "The EU Energy Market Puzzle; Is There Still a Way Out? The Case for a Fourth Energy Package Along Completely Different Lines", *Renewable Energy Law and Policy Review, 121*, 1-13.

Cusumano, Eugenio (2014), "Handing Over Leadership: Transatlantic Environmental Governance as a Functional Relationship", *Transworld Working Paper, 36*, 1-31.

Dahl Kelstrup, Jesper (2015), "Market Power Europe - A Constructive Critique", *International Journal of Public Administration, 38*(12), 895-901.

Damro, Chad (2012), "Market power Europe", *Journal of European Public Policy, 19*(5), 682-699.

Damro, Chad (2015), "Market power Europe: exploring a dynamic conceptual framework", *Journal of European Public Policy, 22*(9), 1336-1354.

Dimitrova, Antoaneta & Rilka Dragneva (2009), "Constraining external governance: interdependence with Russia and the CIS as limits to the EU's rule transfer in Ukraine", *Journal of European Public Policy, 16*(6), 853-872.

Dinan, Desmond (2014), *Europe Recast: A History of European Union,* Hampshire: Palgrave Macmillan, 1-409.

Duchêne, François (1973), "The European Community and the Uncertainties of Interdependence". In M. Kohnstamm & W. Hager (Eds.), *A Nation Writ Large? Foreign-Policy Problems before the European Community*. London: Macmillan, 19-20.

Englert, Dominik, "CASE STUDY: LINKING THE SWISS AND EU ETS". In Katie Kouchakji (eds.) (2015), "Greenhouse Gas Market 2015/16: Making Waves", *INTERNATIONAL EMISSIONS TRADING ASSOCIATION (IETA)*, 54-55.

ENTSO-E, "Union for the Coordination of the Transmission of Electricity (UCTE)", available online: https://www.entsoe.eu/news-events/former-associations/ucte/Pages/default.aspx, consulted the 04.06.2017.

European Commission, "Acquis", 06.12.16, available online: http://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/acquis_en, consulted the 15.12.16.

European Commission (2016), "The EU Emissions Trading System (EU ETS)", *Publications Office*, available online: https://ec.europa.eu/clima/sites/clima/files/factsheet_ets_en.pdf, consulted the 20.03.2017.

Ganz, Bruno & Daniel Giger (2016), "Die Liberalisierung des Strommarktes: Meterspur Anlass 2016", *RAILplus*, 1-17, available online: http://www.railplus.ch/media/archive1/Meterspuranlass2016/DieLiberalisierungdesStrommarktes.pdf, consulted the 05.05.2017.

Hofer, Stephan, "Unwelcome Europeans: EU External Governance and Shallow Europeanisation in Ukraine", in Dirk De Bièvre & Christine Neuhold (eds.) (2007), *Dynamics and Obstacles of European* Governance, Cheltenham: Edward Elgar, 117-135.

Hofer, Stephan (2008), *Die Europäische Union als Regelexporteur: Die Europäisierung der Energiepolitik in Bulgarien, Serbien und der Ukraine*, Baden-Baden: Nomos, 1-206.

International Carbon Action Partnership (ICAP), "Ukraine Plans National ETS for 2017", available online: https://icapcarbonaction.com/fr/news-archive/310-ukraine-plans-national-ets-for-2017, consulted the 20.05.2017.

Ispolinov, A. & T. Dvenadtsatova (2012), "THE CREATION OF A COMMON EU ENERGY MARKET: A QUIET REVOLUTION WITH FAR-REACHING CONSEQUENCES", *Baltic Region, 2*(16), 78-91.

Jegen, Maya & Rolf Wüstenhagen (2001), "Modernise it, sustainabilise it! Swiss energy policy on the eve of electricity market liberalisation", *ELSEVIER, Energy Policy, 29*, 45-54.

KU Leuven Energy Institute (2015), "The current electricity market design in Europe", *EI Fact Sheet, 1*, 1-4.

Lavenex, Sandra (2014), "The power of functionalist extension: how EU rules travel", *Journal of European Public Policy, 21*(6), 885-903.

Lavenex, Sandra & Frank Schimmelfennig (2009), "EU rules beyond EU borders: theorizing external governance in European politics", *Journal of European Policy, 16(*6), 791-812.

Lavenex, Sandra & René Schwok, "The Swiss Way: The nature of Switzerland's relationship with the EU". In Eriksen, Erik O. & John Erik Fossum (Eds.) (2015), *The European Union's Non-Members: Independency under hegemony?,* London and New York: Routledge, 36-51.

Lovei, Laszlo (1998), "Electricity Reform in Ukraine: The impact of weak governance and budget crises", *Viewpoint, The World Bank Group, 168*, 1-8.

Manners, Ian (2002), "Normative Power Europe: A Contradiction in Terms?", *JCMS*, *40*(2), 235-258.

James G. March & Johan P. Olsen (1989), *Rediscovering Institutions: The Organizational Basis of Politics*, New York: Free Press, 160-162.

Melnykovska, Inna & Rainer Schweickert (2008), "Bottom-up or top-down: what drives the convergence of Ukraine's institutions towards European standards?", *Southeast European and Black Sea Studies, 8*(4), 445-468.

Meunier, Sophie & Kalypso Nicolaïdis (2006), "The European Union as a conflicted trade power", *Journal of European Public Policy, 13*(6), 906-925.

Preparedness for Emissions Trading in the EBRD Region (PETER), "Preparedness for Emissions Trading in the EBRD Region", available online: http://www.ebrdpeter.info/uploads/media/report/0001/01/57173c6fa42b5056e876770b042c1e96b1f92b35.pdf, consulted the 15.06.2017.

Prange-Gstöhl, Heiko (2009), "Enlarging the EU's internal energy market: Why would third countries accept EU rule export?", *Energy Policy, 37*, 5296-5303.

Sakwa, Richard (2016), *Frontline Ukraine: Crisis in the Borderlands*, London: I.N. Tauris, 1-347.

Schäfer, Werner (2009), "Some Talk, No Action (Yet): Interdependence, Domestic Interests and Hierarchical EU Governance in Climate Policy", *Swiss Political Science Review, 15*(4), 683-713.

Schimmelfennig, Frank (2015), "Europeanization beyond Europe", *Living Reviews in European Governance, 10*(1), 1-34.

Schimmelfennig, Frank & Ulrich Sedelmeier (Eds.) (2005), *The Europeanization of Central and Eastern Europe*, Ithaca, NY: Cornell University Press, 1-256.

Schwok, René (2009), *Switzerland - European Union: An Impossible Membership?,* Brussels: P.I.E Peter Lang, 1-155.

Sedelmeier, Ulrich (2011), "Europeanisation in new member and candidate states", *Living Reviews in European Governance, 6*(1), 5-52.

Talus, Kim (2016), *Introduction to EU Energy Law*, Oxford: Oxford University Press, 1-180.

Woerdman, Edwin (2015), "The EU Greenhouse Gas Emissions Trading Scheme", *Working Paper Series in Law and Economics*, University of Groningen, 1-29.