

# **The Influence of EU Conditionality and Epistemic Community in Establishing Pockets of Efficiency**

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## **I. Abstract**

This paper addresses the question of why and how pockets of efficiency (PoE) emerge. While previous studies have been focused predominantly on the domestic-oriented explanations, this paper analyzes the influences and interaction between the external (the EU) and domestic actors (epistemic community) to provide an answer to the said question. By linking the PoE and Europeanization research streams, it theorizes a causal mechanism and uses the method of process tracing to test it on three cases of PoE that were created during Croatia's accession negotiations. The empirical analysis identifies two causal mechanisms through which PoE could be established: 1) driven mainly by the EU due to the strong conditionality and 2) driven by the domestic epistemic community thanks to its high interest in the issues that PoEs' are supposed to regulate. These findings contribute to the contemporary discussion on the mechanisms of compliance with the EU conditionality; and in Political Economy on different regimes and strategies of integration of "periphery" countries into transnational regimes and regional integration. In light of the current discussion on possible accession negotiations with Ukraine, the study has also political relevance.

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## **Introduction**

The process of Croatian accession to the European Union (EU) is today considered to be somewhat different than the process of accession of other Central and Eastern European (CEE) countries that joined the EU in 2004 and 2007, respectively. Taking into account the lessons learned from the two mentioned enlargements, and the war period during the 1990s, the EU decided to take more concrete actions when it comes to the inclusion of the Western Balkans countries by broadening the scope of formal demands that countries needed to fulfil in order to become the next members states. Croatia was the first country that had to face with such a novel approach spearheaded by the EU; the distinctiveness of its accession process lies in the fact that it “negotiated the longest in comparison to previous enlargements and it had been exposed to the most elaborate conditionality [that included] extensive focus on sensitive areas such as justice and fundamental rights, as well as fighting corruption and the rule of law in general” (Šelo Šabić, 2019, p. 176).

Due to the identified structural deficiencies in early phases of negotiations, most of all those related to the above-mentioned areas of corruption and the rule of law, Croatia was conditioned to harmonize its legislative framework with the EU *acquis*, meaning that it had to implement new laws and regulations to battle these deficiencies. However, there were sub-areas such as public procurement, prevention of conflict of interest, and access to information that required not only introduction of new laws and regulations, but institutionalization of bodies that were supposed to uphold and enforce the new legislation. Therefore, “[the EU decided to] put much emphasis on establishing and strengthening independent agencies and regulatory bodies” (Čepo, 2020, p. 10). This project will investigate the process of emergence of three such bodies: State Commission for Supervision of Public Procurement Procedures, Conflict of Interest

Prevention Commission, and Information Commissioner. The first two were created in 2003 and 2004, then strengthened with the new laws in 2010 and 2011; the third one was created with the new law introduced in 2013 (Musa, 2019, pp. 189-194).

Since these bodies were established with the overall anticipation to become the beacons of good governance in a system which was and still is considered compromised, the literature suggest we label them as pocket of efficiency (PoE), a concept that outlines “public organizations that are relatively effective in providing the public goods and services [they are] officially mandated to provide, despite operating in an environment in which effective public service delivery is not the norm” (Roll, 2014, p. 24). Apart from definition, there are four other criteria that public organizations need to fulfill to be considered PoE:

- “Relative effectiveness in providing the public goods and/or services the organization is officially mandated to provide
- Capacity to provide this public good or service throughout the country
- Mode of public good or service delivery that is in line with human rights principles and laws of the country
- Period of persistence of at least five years” (Roll, 2014, p. 25).

Other than meeting the definition and criteria to be considered PoE, the three bodies in Croatia operate in the context that appears to be suitable for this research. If one looks at the control of corruption indicator of the World Bank, one can recognize positive changes from 2013, when the country received the status of a new member state, to 2016. However, after the latter year, and up to 2020, the numbers dropped to the levels comparable to those from 2005 to 2012 (The World Bank, 2022). The Corruption Perception Index of Transparency International reflects the same

trajectory: from low points in 2005, indicating higher perception of corruption, to somewhat moderate results in 2015, when the country was for the first time above the threshold of 50 which suggests that it is perceived less corrupt, and back to the under-50 results from 2016 onwards (Country Economy, 2022). Other indicators provided by the World Bank used to measure good governance also manifest backsliding when comparing Croatian pre- and post-accession period. Once again, the numbers as such are not considered alarming; rather, it is the negative trajectory of indicators that reflects regression in the rule of law, government effectiveness, and regulatory quality (World Bank, 2022).

When it comes to the role that these bodies perform today, the predominant explanation is that they were stripped away from their power and politicized from within, most of all by the ruling political elite that was never genuinely interested in their strengthening and creation in the first place. Nevertheless, independent regulatory bodies remain an important factor in battling systemic corruption, especially in the three related areas. However, the recent attempts of political elite to capture these bodies, especially the Conflict of Interest Prevention Commission and Information Commissioner, raises a controversy that was rarely, if ever, investigated in Croatia; that is, about the role of domestic actors in the process of their emergence. More precisely, little information has been provided that detail the interaction between the external and domestic actors during the Europeanization path of the country. To allow this project to address this concern, the general question that it will seek to answer is:

RQ: Why and how pockets of efficiency emerge?

The previous explanations that studied the emergence of PoE have mostly been centered around domestic-related factors that influenced this process; most of all, institutional setting and political context within the country. Such approaches have not investigated the interaction between

actors, external and domestic. This project will address the research question by following a new approach, the one that traces the interplay between the EU and domestic epistemic community during Croatia's accession negotiations, but also taking into consideration the role of domestic political elite who was the one that had a final say about the openness of the process. The structure of the project is as follows: after an introduction, Chapter 1 will present the contemporary streams in the literature of PoE that explain their emergence, as well as the theoretical framework from the Europeanization literature that the project will rely on; Chapter 2 will focus on the research design, that is, the causal mechanism, method used, cases selected, time frame and data collection sources; while Chapter 3 will present the theorized causal mechanism, Chapter 4 will discuss the causal mechanism based on empirical findings; finally, discussion and conclusion chapter will present the summary of the research, its findings, and recognized weaknesses.



# Chapter 1. Literature Review and Theoretical Approaches

## 1.1. Review of Contemporary Streams of PoE's Emergence

The literature on PoE is generally understood to belong to the research area of developmental studies with the main focus being the public administration reform in corrupted settings; most of these studies were trying to provide explanations to the questions of why and how such public organizations emerge (Zúñiga, 2018, p. 2). However, “while some authors use [the concept to describe] exceptionally well-performing organizations, others apply them to policy programmes or development projects” (Roll, 2014, p. 23). This project will rely on the definition provided in the opening chapter, thus, considering PoE as public organizations with the unit of analysis being independent regulatory bodies. Furthermore, some authors claim that even in the developmental studies, and social science in general, the literature on PoE is scarce; therefore, the suggestion is that these academic references would be more appropriate to consider as monologues, then dialogues between scholars (Roll, 2014, p. 27). In the next few sections, the project will review the literature on PoE and provide explanations how the authors who used the concept understood its main features, that is, what was their answer to the research question discussed in this project.

Grindle (1997) underlined organizational culture as the most important factor, “the extent to which beliefs and standards of behavior are shared by individuals within an organization and [...] to which such factors are attributed to the organization itself” (p. 482). Tandler (1997), on the other hand, argued in favor of five explanations or *central themes* that relate to the internal incentives and contextual factors<sup>1</sup>; for this project, the most interesting is the one that illustrates

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<sup>1</sup> Five explanations or *central themes* that explain good performance: 1. workers with strong dedication to their jobs; 2. the existence of sense of calling and mission; 3. a higher degree of autonomy held by workers and diversity of

the dynamics in relationship between central government, local government and civil society (pp. 14-15). In his work, Leonard (2008) used the previous findings and synthesized them into five *mega-hypotheses* that explain PoE's emergence: the first two relate to the internal factors – managerial and organizational attributes – while the other three underline the contextual political economy – political process, political institutions, and political economy (pp. 11-25). Afterwards, Roll discussed the competing interests of political actors as the main condition for PoE's emergence (Roll, 2011, p. 21). Finally, the monologues became dialogues when the same author applied the earlier conclusions, incorporated and further synthesized them into his work; thus, reducing the number of hypotheses to three<sup>2</sup>, while introducing external or political economy factors to the discussion (Roll, 2014, pp. 33-35).

From this brief chronological overview of the scholarship that deals with PoE, one can recognize a certain extent of theoretical ambiguity among authors' explanations about the causes of PoE's emergence, even though this ambiguity seems to be reduced once Roll decided to integrate the previous understandings to three predominant explanations. However, even Roll's arguments (2014) are somewhat imprecise, especially his notion of external or political economy factors which he uses to describe “how the political system is organized, which logics, incentives and whose interest dominate [...] It assumes that these factors that are external to the organization have a direct impact on the organization's performance” (Roll, 2014, p. 34). Here, the definition provided by the author could be misleading given the fact that he claims to be referring to the

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responsibilities they perform; 4. an effort of workers to meet the expectations set before them; 5. the three-way interaction between central government, local government and civil society (Tendler, 1997, pp. 14-15).

<sup>2</sup> Three hypotheses on PoE emergence: „Hypothesis 1 (internal factors): An organization's effectiveness in a challenging context is determined by *leadership and management*; Hypothesis 2 (external or political economy factors): The underlying *political economy* in which organization is placed; Hypothesis 3 (function or task-related factors): The *function* an organization performs determines the degree of specificity of all the benefits it delivers“ (Roll, 2014, p. 34).

external factors, while actually he discusses the political context that may contribute to organization's productivity. Therefore, one can argue that each author has their own understanding of the causes of PoE's emergence; while most explanations appear to be similar, which leads us to recognize a certain pattern, the confusion may arise from their individual and unclear conceptualizations.

Nevertheless, if one follows Zúñiga's (2018) writing, two streams of explanations of PoE's emergence could be observed in the reviewed literature (pp. 2-4). The first stream underlines the importance of endogenous institutional aspects (Zúñiga, 2018, p. 3) and is exemplified in the writings of Grindle (1997), Hildebrand and Grindle (1997: as cited in Roll, 2014, pp. 31-32) and in the first two hypotheses provided by Leonard (2008). This stream is preoccupied with the managerial and organizational attributes of individuals who constitute these organizations which subsequently contributes to the overall positive performance of organizations, thus, establishing them as PoE. The second stream highlights the importance of the political context (Zúñiga, 2018, pp. 3-4); it is more concerned with the domestic political conditions and interests of political actors who might influence PoE's emergence. Such explanations can be found in the work of Tendler (1997), Leonard's third, fourth and fifth hypothesis (2008) and Roll (2011). A common denominator of both these streams is that they prioritize domestic-oriented explanations. Regardless of whether the focus is on institutional aspects or political context, both seem to narrow the discussion, that is, the scope of investigation, only to a country where PoE have appeared.

Due to the fact that both streams are grounded in the domestic-oriented explanations, one could analyze them from the perspective of actors whose actions contribute to the overall better public sector performance. Here, the actors do not have to be only individuals, but various formal or informal groups, such as non-governmental or expert organizations that share the same goal.

The interaction between such groups and state actors is well described in Tendler's (1997) work on decentralization where she argued against the notion that non-governmental organizations and civic associations are in opposition to central government and advocate for more accountability and quality of public sector performance, while central government is understood to be indifferent to their actions (Tendler, 1997, p. 15). On the contrary, she offered an argument that highlighted the interaction between the reforming groups of actors in the state and local governments with the reforming groups in civil society that stimulate the better performance (Tendler, 1997, p. 157). The role of civil society and other actors who consider themselves independent needs to be taken carefully because, as Tendler says, they can be just as much obstructive as supportive elements and can perpetuate bad practices in the public sector (Tendler, 1997, pp. 156-157).

The other author who discussed the interplay between political actors by underlining their respective interests is Roll (2011). His arguments seem to follow Tendler's notion of mutual collaboration of state and civil society, even though the prevalence is on the side of politics. For clarity and accuracy purposes, his argument on PoE emergence will be directly quoted:

"In a given political context a decisive political actor (or a group of actors) has an interest that a particular public service is being delivered effectively. The respective public organization is then provided with a high degree of autonomy, focused powers and political protection. Moreover, a qualified and motivated pioneer leader with outstanding inclusive leadership and management skills is appointed. This explanation highlights that the key political mechanism for the emergence of PoE is the interaction of political interest and function" (Roll, 2011, p. 7).

To support his argument, Roll (2011) presented the case of National Agency for the Prohibition of Traffic in Persons and Other Related Matters (NAPTIP)<sup>3</sup> in Nigeria as an example of PoE and explained how it was established. The origin of the case reaches back to 1999 when Amina Titi Atiku Abubakar, wife of the former Vice President, created a non-governmental organization with the aim of battling trafficking and child labor. Through their activities, Atiku Akbar gained support from other organizations, both civil society and international-based, while her position in the political hierarchy of the country enabled her to emphasize the importance of introducing a new act that would combat these issues (Roll, 2011, p. 9). Subsequently, the act was indeed inaugurated, and with it NAPTIP was created as an organization that enjoyed political support and had financial means to perform its tasks (Roll, 2011, p. 9).

From this brief overview of PoE literature, two problems could be detected. First, even though the authors begin from the questions of *why* and *how* PoE emerge, their explanations mostly concern the factors that contribute to their productivity, not emergence. This problem is mostly related to the endogenous institutional stream. Second, exogenous aspects seem to be considered only in terms of political and economic environment that the organizations are placed upon; not as a supranational, top-down, incentives from an external actor. This problem is predominantly found in explanations related to the political context stream. To address these problems and fill in the detected gap, this project will offer a different understanding of factors that lead to the emergence of PoE: by introducing the Europeanization literature, especially those on the external influence, the project will claim that PoE can be established in countries that are considered developed through the interaction between the external and domestic actors. This process unfolds mostly

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<sup>3</sup> In addition to the National Agency for the Prohibition of Traffic in Persons and Other Related Matters (NAPTIP), Roll investigated the case of the National Agency for Food and Drug Administration and Control (NAFDAC) as two successful public organizations in Nigeria (Roll, 2011, p. 4).

during the accession negotiations to join the EU when the EU has the greatest leverage over a candidate country.

## **1.2. Introduction of the Europeanization literature**

In the context of public administration reform, which is generally considered to be a natural habitat when discussing PoE, the influence of the EU on candidate countries is predominantly evaluated in terms of successful rule transfer or institutionalization of EU rules. As described by Schimmelfennig and Sedelmeier (2004), “such institutionalization includes the transposition of EU legislation into domestic law, the restructuring of domestic institutions according to EU rules, or the change of domestic political practices according to EU standards” (p. 662). The same authors expand their argumentation about how this process occurs and develop three models of EU external governance: the external incentives model, the social learning model and the lessons-drawing model, with each having its respective logic and different understanding of both external and domestic actors. Therefore, the first model emphasizes the importance of the EU conditionality as the most important factor of Europeanization process in candidate countries (Schimmelfennig & Sedelmeier, 2005, pp. 10-12 as cited in: Schimmelfennig & Sedelmeier, 2019, p. 3). According to the model, “the EU pays the reward if the target government complies with the conditions and withholds the reward if it fails to comply” (Schimmelfennig & Sedelmeier, 2004, p. 663).

Here, the EU incentives have fundamental role in influencing the behavior of domestic actors in candidate countries and their willingness to introduce changes and implement EU rules. Their strategy, however, is based on the four criteria included in the cost-benefit balance: “(i) the determinacy of conditions, (ii) the size and speed of rewards, (iii) the credibility of threats and

promises, and (iv) the size of adoption costs” (Schimmelfennig & Sedelmeier, 2004, p. 664). The other two models, social learning and lessons-drawing, contrary to external incentives main prepositions, have different basic tenets of how the EU rule transfer in candidate countries occur, especially taking into account the non-existence of conditionality in their cases. While the social learning model highlights the importance of ideational factors, such as identities and norms, that affect the country’s decision to adopt EU rules based on their appropriateness to domestic setting, the lessons-drawing model implies domestic actors’ discontent with current environment in their countries that subsequently motivates them to search for other policy solutions, here understood as EU rules, and finally adopt them (Schimmelfennig & Sedelmeier, 2004, pp. 667-668).

That said, one could argue that the second and third model assumes domestic actors to have somewhat more discretion at their hands by taking a more proactive role when transferring and adopting EU rules, contrary to the external incentives model in which their cost-benefit calculation is heavily dependent on the conditions and rewards set before them, thereby making their role more reactive. However, the Europeanization literature appear to put little faith not necessarily on the two respective models, but other forms of rule transfer that hinder the central role of EU promotion, claiming that “non-material incentives and mechanisms of social learning such as imitation, persuasion, or social influence do not generally overcome domestic resistance against the adoption...” (Schimmelfennig, 2008, p. 920). This is especially the case, as the literature suggests, when analyzing the accession negotiations of CEE countries and perspective of future enlargements, hence, the majority of studies are based on the external incentives model. Nevertheless, the third model, lessons-drawing, at least for the purpose of this project, should not be so easily disregarded because its applicability depends on several factors, one of them being the existence of EU-centered epistemic community (Schimmelfennig & Sedelmeier, 2004, p. 668).

Continuing on their work on the EU external governance, Schimmelfennig and Sedelmeier (2004) underline the difference between democratic conditionality and *acquis* conditionality, both of which are an integral part of the external incentives model. The former primarily concerns:

“Political principles of the EU, the norms of human rights and liberal democracy (...) The main external incentive in this context is, first, the establishment of institutional ties, such as association, and subsequently, the opening of accession negotiations. Once accession negotiations start, democratic conditionality recedes in the background” (Schimmelfennig & Sedelmeier, 2004, p. 669).

The latter focuses on a more solid and tangible conditions, that is, requirements that countries have to meet in order to join the membership. Thus, it “concerns the specific rules of the *acquis communautaire*. This context starts with concrete preparations for membership, which is the major external incentive for rule transfer” (Schimmelfennig & Sedelmeier, 2004, p. 669). However, what puts the two conditionalities further in contrast is not only the fact that democratic precedes *acquis*, but that the former can be, first, unnecessary for the countries that have already progressed toward consolidation, and second, costly to those countries with nationalist and authoritarian leaders (Schimmelfennig & Sedelmeier, 2004, pp. 669-670).

Discussed from the perspective of domestic actors included in rule transfer, one could arguably pose a question whether Europeanization is a one- or two-way process. As indicated by Vos (2017), there are still ongoing debates in the literature about the direction of influence, with one stream underlining the top-down nature of conditionality, while other recognizing the interaction between national and supranational actors as an important element, with former being able to redirect or respond to conditionality (p. 676). The relevant piece of literature that points to



the controversial role of domestic actors is Jacoby (2006)<sup>4</sup>, that is, the coalition model he develops to depict the relationship between the external and domestic actors. According to the model, external actor, in the paper theoretically referred to as *outsider* and empirically represented as the EU, enters into a coalition with domestic actor; however, “the prerequisite [...] is some domestic faction with whom the outsiders can work” (Jacoby, 2006, p. 629). Also, the outsider must acknowledge the existence of minority traditions, defined as “domestic movements, parties, or subsets of state officials who have pursued, but never achieved, a particular institutional solution to an important political problem” (Jacoby, 2006, p. 629).

To shed light on actions of such minority traditions, that is, the domestic actors, the project will follow Olga Löblová’s understanding on how epistemic community influences policy-making (Löblová, 2018). In her paper, Löblová test the causal mechanism<sup>5</sup> created on ideas introduced by Haas (1992) on two cases: in the first one, the actions of epistemic community were successful in establishing a health technology assessment agency in Poland; in the second one, even though it followed the same steps along the way, epistemic community was unsuccessful in creating the similar kind of agency in the Czech Republic (Löblová, 2018, p. 162). Without going into further details, the most important finding of the study was that epistemic community needs to gain access to decision-makers in both formal and informal manner to influence policy process, rather than being officially represented in state’s bureaucracy which, theoretically, could bring more weight, but has proven insufficient when it comes to the case of the Czech Republic (Löblová, 2018, p. 175). Since Löblová focuses on epistemic community, the project will follow her causal

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<sup>4</sup> Jacoby (2006) discusses three modes of external influence: inspiration, coalition and substitution. The modes are theorized according to the scope of intervention undertaken by the external actor, that is, the outsider, from the minimum to the most extensive intervention (p. 627).

<sup>5</sup> Löblová (2018) provides the four-part sketch of the theorized causal mechanism (p. 165) as well as the sketch of the revised causal mechanism (p. 176).

mechanism only to some extent, most of all, in relation to the actions undertaken by the domestic epistemic community, but with certain parts of the causal mechanism reconceptualized.

Thus, taking into consideration the 2004 and 2007 EU enlargements, and consequently the distinctiveness of the Croatian accession negotiations, exemplified in the decision of the EU to apply stricter approach, the external incentives model appears to be the one most suitable for this project, most of all, due to its emphasis on conditionality as the essential tool of EU rule transfer, especially when it comes to the policy of enlargement. At the same time, in terms of domestic actors who participate in the accession negotiation process, this model seems to target only the relation between the EU and political elites, that is, decision-makers in candidate country because they are the only ones in a position to make cost-benefit calculation and make official responses to conditionality. Because of the fact that the project investigates the interaction between the EU and domestic epistemic community, but does not ignore the role of political elites, in addition to the EU external incentives model, it will also include the coalition model due to its focus on domestic factions and minority traditions. This will allow the project to analyze the actions of both political elites and epistemic community, under the overarching umbrella of EU conditionality.

## Chapter 2. Research Design

To provide an answer to the main research question, the project will examine the interaction and sequencing between the external and domestic actors during the process of a country's accession negotiations to join the EU with the outcome being established PoE (dependent variable (DV)). For this purpose, the project will address three sub-questions:

- What was the role of external actors in PoE's emergence?
- What was the role of domestic actors in PoE's emergence?
- How did external and domestic actors interact throughout this process?

The external actors, that is, the EU, will be conceptualized through the role of the EU conditionality (independent variable #1 (IV#1)) which is the main tool used by the EU to influence domestic changes in candidate country. The project will follow the definition provided by Koch (2015) whereby conditionality is seen as “an incentive instrument in the relationship between two actors, in which one actor aims at changing the behavior of the other by setting up conditions [...] and by manipulating its cost-benefit calculation” (p. 99). The domestic actors, on the other hand, here referred to as the domestic epistemic community (independent variable #2 (IV#2)), are understood as “a network of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain” (Haas, 1992, p. 3). This concept offers the project an opportunity to include a variety of actors, including representatives of civil society, think tanks, academia and independent experts, all who have been working in suggesting policies related to corruption and rule of law.

The project will theorize the causal mechanism of PoE's emergence and use the method of process tracing to test it on three selected cases of PoE in Croatia. In general terms, process tracing

is used due to its methodological ability to follow a particular chain of events with subsequent evaluation of evidence based on which certain explanations can be reinforced or rejected (Ricks & Liu, 2018, p. 846). Following Beach and Pedersen (2013), this project will apply process tracing with an intention to “evaluate whether evidence shows that the hypothesized causal mechanism linking X and Y was present and that it functioned as theorized” (p. 11). Therefore, the process will be organized in three steps: first, theoretical conceptualization of the causal mechanism based on activities undertaken by entities; second, operationalization of the causal mechanism through observable manifestations; third, collection of evidence to make claims to what extent the causal mechanism was present in cases (Beach & Pedersen, 2013, p. 14). The theorized causal mechanism will follow the logic of a policy cycle; its different parts will refer to stages of policy-making process. The project, however, will use only the first three stages of policy cycle, agenda-setting, formulation, and adoption, since the causal mechanism is interested in the emergence of PoE, a process that ends with adoption of laws and regulations; it does not trace implementation and evaluation stages.

Even though their work is organized differently and they perform different tasks, the three cases, State Commission for Supervision of Public Procurement Procedures, Conflict of Interest Prevention Commission, and Information Commissioner, are selected due to two common features they possess: “they are instruments of the anti-corruption system [and] they have been shaped to a larger or smaller extent during the Europeanization process, that is, [the Croatian] accession to the EU” (Musa, 2019, p. 188). This enables the project to methodologically justify their inclusion in the analysis: all three cases are considered independent regulatory bodies, they have been created or strengthened in the similar context and with the same intention; thus, the cases display the presence of both cause and outcome, even though one must not rule out the possibility that there

have been differences in their path toward becoming PoE. For this reason, the theorized causal mechanism will be tested on all three cases to investigate what parts of it were present in the process of their emergence. The detailed information about all three cases, such as the legal framework within which they operate, their function and jurisdiction, can be found in Musa (2019).

The time frame chosen for this research includes the period from 2005, when the Croatian accession negotiations began, to 2013, when the country officially joined the EU. Even though the negotiations on respective chapters, i.e., Chapter 23 – Public Procurement, which concerned the State Commission for Supervision of Public Procurement Procedures, and Chapter 23 – Judiciary and Fundamental Rights, which concerned the Conflict of Interest Prevention Commission and Information Commissioner, took place in different years, 2008-2010 and 2010-2011, the argument is that the research should incorporate the whole accession negotiations period for two reasons. First, indicators of both EU and domestic epistemic community's activities on tackling deficiencies in public procurement, conflict of interest and access to information areas, reaches back to the very beginning of the process. Second, it is often argued that strengthening or creation of bodies should not be regarded finished only by the implementation of new legislation; rather, it is necessary to introduce internal structure composed of qualified people who would govern these bodies. In the latter two bodies, such structure was inaugurated in 2013, which corresponds with the year when Croatia entered the EU.

The data used in this project is collected through nine semi-structured interviews conducted with representatives of three investigated bodies, members of the political elite who took part in the process of accession negotiations with the EU, and representatives of epistemic community in Croatia. Five interviews were conducted online, through Zoom platform, while four interviews were organized by a phone call. The reason for this is that all interviewees were located in Croatia,

while the interviewer was at that time in Vienna, Austria. The interviews took place in a five-and-a-half-week period, with the first being conducted on April 1, 2022, and the last on May 11, 2022. Similar to the study of Wunsch (2016) who did interviews to investigate the role of the Croatian NGOs with regards to Chapter 23, this project asked the interviewees to describe the past events that led to the emergence of PoE and to depict the activities undertaken by their respective cohort. In addition, representatives of each cohort were asked to shed light on how they interacted with representatives from other cohort. For example, how political elites interacted with epistemic community, and vice versa. To increase the internal validity of findings, the data obtained through interviews was triangulated with data from secondary sources, such as the official documents of the EU, publications issued by the epistemic community, as well as academic and professional literature.

## Chapter 3. The Theorized Causal Mechanism of PoE's

### Emergence

This chapter theorizes a causal mechanism that explains how PoE emerge during the process of a country's accession negotiations with the EU. It investigates the role of both the external and domestic actors, that is, their interaction and sequencing in a three-part mechanism that is based on the cycle of policy-making process: agenda-setting, formulation, and adoption. In each part of the causal mechanism, observable manifestations are identified to confirm the existence of particular parts (Zeller, 2021, p. 4). While the causal mechanism theorizes the presence of both the external actor, the EU, and domestic actor, epistemic community, it acknowledges that due to the structure based on policy-cycle and the general openness of negotiations with the EU, some actors may be underrepresented in certain parts of the causal mechanism. For example, the accession negotiations are often considered to be a very closed process that includes only a minimal number of actors in the opening and ending stages, while the middle stage is generally intended for a nation-wide deliberation on matters at hand. This causal mechanism had to take this into account.

#### *Cause: EU conditionality*

The emergence of PoE in the context of a country's accession negotiations to join the EU begins with the principle of conditionality as the main cause that influences the rest of the process or, to put it in a more colloquially, sets the rules of the game, along with the main players participating in the game: the EU and domestic actors, that is, the political elite in candidate country. The very definition of EU conditionality provided by Koch (2015) in earlier chapter lays out fertile grounds for the investigation of interaction and sequencing between the two actors included in the process:

it understands the EU as the initiator of reforms which uses its leverage during the accession negotiations to contribute to the betterment of the public sector performance in candidate country, while the political elite in candidate country, based on the cost-benefit calculation, follows the guidelines set by the EU in order to proceed to the next stage of negotiations. The EU conditionality is, thus, considered a necessary incentive whose presence, given the overall reward after the negotiations, triggers the political will in candidate country to adopt the EU rules and establish effective public organizations. The observable manifestations for the cause are the accounts of pre-conditions (demands) set before a country to open the accession negotiations (OM1) as well as incentives and rewards (OM2) or punishment (OM3) depending on the country's compliance or non-compliance. Further observable manifestations are accounts of support provided by the EU (OM4) and actions undertaken by the country to fulfill pre-conditions (OM5).

**Table 1.** Observable manifestations (OM) of the Cause

No.	Observable manifestation (OM)
1	Accounts of pre-conditions (demands) set before a country to open the accession negotiations
2	Accounts of incentives and rewards linked to compliance with pre-conditions (demands)
3	Accounts of punishment (positive or negative) linked to non-compliance with preconditions (demands)
4	Accounts of support (financial, technical, etc.) linked to implementation of pre-conditions (demands)
5	Actions undertaken by the country to fulfill pre-conditions

*Part I of the causal mechanism: agenda-setting*

The first link in Part I of the causal mechanism is the process in which the EU identifies structural deficiencies in a candidate country that need to be addressed throughout the negotiations period, that is, under the respective chapters. By following the framework of the policy-making process, the actions undertaken in this part would refer to the first stage of policy cycle, agenda-setting.



Here, the EU has the predominant role since its respective institutions and agencies are the ones that make the general evaluations of a country's application for membership and subsequently give opinions and recommendations based on the results of the conducted assessments. Some of the observable manifestations in this part of the causal mechanism are accounts of PoE-relevant issues identified in EU institutions and agencies' documents, such as the European Commission's opinion of a country's application for membership (OM6), Council of the European Union's decision on principles, priorities and conditions (OM7), Directorate-General for Neighborhood and Enlargement Negotiations' screening reports (OM8). Based on the findings from these documents, the EU issues a list of requirements that a country needs to fulfil known as benchmarks (OM9), which leads to the second link in Part I of the causal mechanism where the national government in candidate country establishes negotiating structure composed of working groups dealing with each chapter (OM10). This is of special importance for the project due to the fact that working groups are envisaged to encompass a variety of actors, not only members of political elite, but representatives of NGOs, academia and independent experts.

**Table 2.** Observable manifestations (OM) of Part I of the causal mechanism

No.	Observable manifestation (OM)
6	Accounts of PoE-relevant issues in European Commission's opinion of a country's application for membership
7	Accounts of PoE-relevant mentioning in Council of the European Union's decision on principles, priorities and conditions
8	Accounts of PoE-relevant mentioning in Directorate-General for Neighborhood and Enlargement Negotiations' screening reports
9	Accounts of PoE-relevant points in opening and closing benchmarks
10	Negotiating structure on PoE-relevant matters created by the national government

*Part II of the causal mechanism: formulation*

Once a candidate country defines the negotiating structure and the process is officially underway, the number of actors included in deliberation about the issues identified in Part I of the causal mechanism grows even further, which goes hand in hand with the formulation phase of policy cycle. Regardless of the fact that national government has created working groups composed of various actors, they are still considered to be a part of the official negotiating structure related to political elites, taking into account that their job is to harmonize the national legislation with the EU acquis within the respective chapters. However, Part II of the causal mechanism sees the introduction of other actors who work separately from working groups, here conceptualized as epistemic community. Following the definition of Haas (1992), but in the context of EU accession negotiations, epistemic community may encompass all those who work in a particular field dealing with the issues previously identified by the EU, and provide suggestions or policy recommendations how to tackle those issues. Even though it might be unclear whether one should refer to the members of working groups also as epistemic community, the distinction between the two could be found in the fact that the negotiating structure, that is, working groups are to a larger extent influenced by the official position of political elite, while epistemic community enjoys more freedom in its work. Nevertheless, even if the two are taken together, for this project the most important is that they are included in the causal mechanism in the first place; thus, responding and (re)shaping the influence of the external actor.

Once the epistemic community has been introduced in the process, the next link in Part II of the causal mechanism are public discussions and consultations held between as many actors as possible. Such deliberative methods are used to foster dialogue and exchange opinions in order to find solutions for structural deficiencies recognized in Part I of the causal mechanism. Taking into account what areas were identified as critical and where the EU has decided to put emphasis on, it

is expected that the epistemic community will formulate its suggestions and solutions as a reaction to the EU incentives; therefore, PoE will be a consequence of both the concerns issued by the EU and policy recommendations issued by epistemic community. However, since this is a two-way process in which epistemic community has the discretion to raise some problems on its own, one needs to keep the door open for epistemic community to formulate its recommendations in areas not necessarily prioritized by the EU, but still required to be a subject of reform. Nevertheless, Part II of the causal mechanism includes several observable manifestations, most of all, accounts of PoE-related matters from the EU annual progress reports (OM11) which underline how good or poor a country is performing with respect to identified deficiencies, accounts of continuous or discontinuous PoE-related demands issued by the EU (OM12) which depend on the results from progress reports. Based on these two observable manifestations, one can recognize the same from the domestic actors, such as accounts of organized public discussions and consultations (OM13), statements of epistemic community members (OM14), recommendations included in policy documents issued by epistemic community (OM15), all with regards to PoE-related matters.

**Table 3.** Observable manifestations (OM) of Part II of the causal mechanism

No.	Observable manifestation (OM)
11	Accounts of PoE-related matters in EU annual progress reports
12	Accounts of continuous or discontinuous PoE-related demands issued by the European Union
13	Accounts of organized public discussions and consultations on PoE-related matters
14	Statements of epistemic community representatives on PoE-related matters
15	Policy documents issued by epistemic community on PoE-related matters

### *Part III of the causal mechanism: adoption*

The final part of the causal mechanism reflects the adoption stage of policy cycle whereby a consensus between actors included in public discussions and consultations is reached on how to

battle structural deficiencies identified in Part I. This leads to the subsequent action undertaken by the EU in which it evaluates the progress that a country has made over the period of accession negotiations and approves the solutions suggested by epistemic community. This results in further harmonization of national legislation with EU *acquis*, that is, in the introduction of new laws and regulations implemented by national parliament. The new laws and regulations are, therefore, set out to strengthen the existing or establish new public organizations whose responsibility is to battle structural deficiencies. The main actors here are the EU and domestic political elite who votes in favor of the new laws and regulations in national parliament. Epistemic community can participate in this part of the causal mechanism as well, given that their members can participate in working groups responsible for drafting of the new PoE-related legislation that needs to be adopted in national parliament (OM16). Therefore, one can recognize accounts of directives, regulations, or decisions transferred from the EU to national legislation (OM17), as well as accounts of new acts enacted by national parliament (OM18), both of which mention the role of organizations that are to become PoE.

**Table 4.** Observable manifestations (OM) of Part III of the causal mechanism

No.	Observable manifestation (OM)
16	Accounts of epistemic community participation in working groups responsible for drafting of new PoE-related legislation
17	Accounts of PoE-related mentioning in EU directives, regulations, or decisions
18	Accounts of PoE-related mentioning in new acts and laws enacted by national parliament

*Outcome: pockets of efficiency*

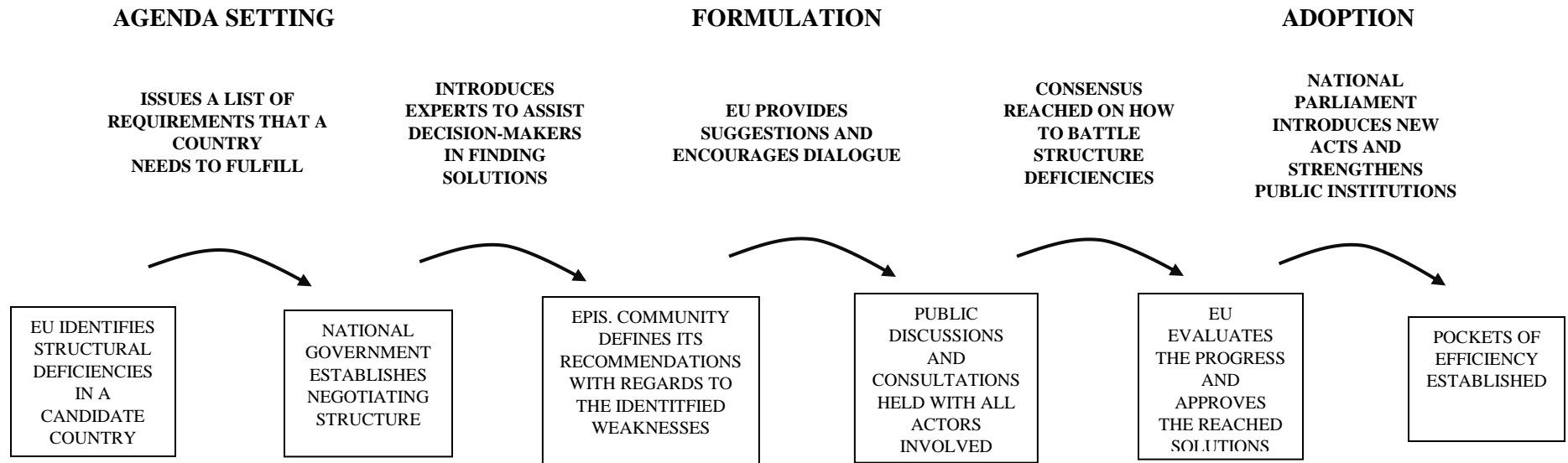
The result of the process is established PoE, which emerge either through strengthening of existing public organizations or by creation of new ones. However, this process should not be considered finished only with the introduction of new laws. From the perspective of legislative changes, these

organizations can formally start to exist at the end of the adoption stage; nevertheless, they still require professional and independent people to be put in charge, with more powers available to perform the tasks the organizations are mandated to perform, and without any kind of pressure exerted by political elites. This argument goes in line with the PoE literature which highlighted the importance of leadership element that subsequently influences the function that PoE perform. Therefore, the observable manifestations of the outcome are the accounts of the new leadership appointments in PoE (OM19), accounts of broadened powers held by PoE (OM20), as well as accounts of attempted political pressure to gain control over PoE (OM21).

**Table 5.** Observable manifestations (OM) of the Outcome

No.	Observable manifestation (OM)
19	Accounts of new leadership appointments in PoE
20	Accounts of broadened powers held by PoE
21	Accounts of attempted political pressure to control PoE

**Figure 1.** Theorized causal mechanism of PoE's emergence.



Source: own illustration.

## Chapter 4. Empirical Analysis

In this chapter, the empirical results of three investigated cases of PoE in Croatia will be presented, that is, the process of their emergence through the interaction of external and domestic actors, according to the theorized causal mechanism. Since the data obtained through the interviews, as well as information gathered from the official EU sources and publications of domestic actors, do not always point to the concrete body, but in some occasions provide that data that apply to all three cases and offer a more general understanding of their emergence, it was decided that the structure will be as follows: instead of having subsections that present the path of each body through the different parts of the causal mechanism, the chapter will have subsections created according to the causal mechanism and then it will present the path of each body separately, by highlighting data and information that are considered common, but will clear division of data and information that refer to the specific body. For example, the cause for the emergence of each body is the same; thus, it will apply to all three cases. However, the agenda-setting, formulation and adoption parts, have both common and specific findings, which will be underlined in the respective parts of the causal mechanism.

*Cause: democratic and acquis conditionality*

**Case 1: State Commission for Supervision of Public Procurement Procedures**

**Case 2: Conflict of Interest Prevention Commission**

**Case 3: Information Commissioner**

EU conditionality that eventually affected the emergence of PoE, in Croatian case, traced back to the period before the accession negotiations started. Based on the external incentives model, both democratic and *acquis* conditionality have arguably been present during the pre-negotiations period (OM1) with the first being evidenced in efforts of the EU to make Croatia fully cooperate with the International Criminal Tribunal for the Former Yugoslavia (ICTY), while the second has been exemplified in the overall increase of negotiations chapters when compared to countries that joined the EU in 2004 and 2007. With regards to the democratic conditionality, the political will and institutional ties have been present and established: “the consensus between the political elites was practically absolute, resulting in parliament’s unanimous ratification of the SAA [Stabilization and Association Agreement] in December 2001, and the Resolution on Accession to the EU, which set European integration as a strategic national goal, adopted in December 2002” (Šeperić, 2011, p. 464). At that time, Croatia was also receiving financial and technical support (OM4) through pre-accession aid programs such as CARDS, Phare and ISPA (Antonopoulos & Bachtler, 2014, p. 190). However, the issue remaining was the one related to the country’s commitment to fully cooperate with ICTY regarding the capture of Ante Gotovina, a war general at large, which was set as a condition by the EU, but was at the same time an unwelcomed topic in Croatia (Schimmelfennig, 2008, pp. 928-929).

Even though the European Council set the date for opening of the accession negotiations in March 2005, the process was postponed (OM3) which put Croatia “in an endgame of highly credible political conditionality: the ultimate prize of accession negotiations was in reach; compliance on the national identity issue was the last remaining stumbling block; and the EU had demonstrated its resolve to sanction non-compliance” (Schimmelfennig, 2008, pp. 928-929). From the logic of democratic conditionality, the decision of the Croatian government to eventually



cooperate with ICTY can be explained as follows (OM5): the ruling party from 2003 was the Croatian Democratic Union (HDZ), which underwent changes compared to its character during the 1990s and reformed into a modern center-right and pro-European party, with the main foreign policy goal being the membership in the EU (Schimmelfennig, 2008, p. 929). The party also enjoyed domestic support with its president and then-Prime Minister Ivo Sanader being highly popular which made its domestic adjustment cost to EU rules lower compared to the benefits it would gain from joining the EU (Schimmelfennig, 2008, p. 929). This argumentation goes hand-in-hand with Schimmelfennig and Sedelmeier' claim (2004): "where [strong] nationalist and authoritarian governments were in power, the domestic political costs of complying with EU conditionality proved prohibitively high" (pp. 669-670). Therefore, once the general was apprehended, the narrative about the Croatian cooperation changed, and the European Council greenlit the beginning of accession negotiations, seen as the overall reward of the country's compliance (OM2).

The *acquis* conditionality in the Croatian case was different both in number and content compared to those of countries that entered the EU in previous enlargements. Apart from the fact that the number of chapters of *acquis communautaire* was now 35, which marked the increase by four chapters from 2004 and 2007, the country was also presented with opening and closing benchmarks: "Set as a condition for opening or closing negotiations on a certain chapter, this new instrument aimed at drawing the attention of the candidate country to the most important reforms required before accession, and usually included the adoption of certain laws, strategies and action plans" (Šeperić, 2011, p. 467). In total, the country "received [...] 127 benchmarks, out of which 23 were opening benchmarks in eleven chapters and 104 were closing benchmarks in 31 chapters" (Vlada, 2011: as cited in Šeperić, 2011, p. 467). Even though opening and closing benchmarks in

this causal mechanism are considered to be a part of agenda-setting due to the fact that they help the country to identify and address structural problems, their very existence is an essential part of EU conditionality, most of all, *acquis* conditionality; therefore, one might say that formally they serve as a link from the cause to the Part I of the causal mechanism, while in content they belong to the agenda-setting.

*Part I of the causal mechanism: identifying structural deficiencies*

It is important to note that the establishment of PoE was not explicitly mentioned in the official documents of the EU institutions or reports provided by its agencies; rather, the focus was on disclosing the problem of corruption that was detected in Croatia and on the implementation of new laws and acts that would address it. However, the project must recognize that the data on the content of opening and closing benchmarks (OM9) were not consulted during the research stage due to their unavailability and absence at the online sources. This problem was identified not only during the data collection for this project, but it emerged as an obstacle for the Croatian epistemic community during the country's accession negotiations. As indicated by one of the interviewees who at that time was working in an NGO sector: "We could not get benchmarks around the chapter [Chapter 23] in order to know how to press the political elite because the state marked the whole process as confidential, so we did not have that information" (Interview, representative of NGO #1). Nevertheless, from other relevant documents, such as the European Commission's analysis on Croatia's preparedness to join the EU (OM6), the idea of widespread corruption was present as well as the need to enhance the domestic efforts to battle it (*Opinion on Croatia's...*, 2004, p. 19). Furthermore, the priorities that were underlined by the European Council (OM7) recognized both the problem of corruption and ineffective public administration. The importance to tackle the latter

was highlighted as the long-term priority with the document stating that the country needs to “continue the process of institution building directly relevant to the *acquis* and introduce reforms to improve the effectiveness of the public administration generally” (*Council Decision...*, 2004, p. 297/25).

However, a closer look at the screening reports (OM8) for Chapter 5 (Public Procurement) and Chapter 23 (Judiciary and Fundamental Rights) offer some more insights into concrete steps that were undertaken and advised by the EU which concern the need to implement new laws and acts that would strengthen the existing bodies. Even though the screening process of particular chapters had been conducted somewhat after the accession negotiations began, the domestic actors were already introduced to the most relevant issues identified by the EU; therefore, the negotiating structure established by the Croatian Government, along with the working groups for each chapter (OM10) that were a constituent part of it, participated in preparation of screening reports (Šeperić, 2011, p. 465). Afterwards, working groups were dealing with the drafting and creation on new laws and acts to be implemented in line with the EU *acquis*. According to the information gathered through interviews, the composition of working groups was rather heterogeneous and the reason was “because there were not enough professional people in the state administration to do the job and because the whole process was deliberately inclusive to create a stronger connection with society” (Interview, representative of the National Committee #3). This finding was confirmed by another interviewee who underscored the role of professors and scientists who took part in working groups depending on their specialization (Interview, representative of the National Committee #2). Taking everything into account, one might say that the domestic epistemic community, consisting of representatives of academia, business, NGO sector, had its place in the agenda-setting, if

anything, then through the participation in working groups where they were included in the identification of domestic issues that needed to be tackled in the subsequent stages.

### **Case 1: State Commission for Supervision of Public Procurement Procedures**

Screening report for Chapter 5 detailed the role of the State Commission for Supervision of Public Procurement Procedures by providing the information on its structure and past results. Following this, the report emphasized the necessity to strengthen its operational capacities; however, it did not mention what steps have to be undertaken, other than seminars and trainings for its employees (*Screening Report*, 2006, p. 10). With regards to public procurement system in general, the report underscored that “important efforts are necessary to align the legislative [with the EU acquis], with particular challenges in the area of concessions, and important changes necessary on all other aspects including remedies. Coherence of any legislative initiative on public-private partnership with other rules requires attention” (*Screening Report*, 2006, p. 10)

### **Case 2: Conflict of Interest Prevention Commission**

On the other hand, screening report for Chapter 23, which encompassed both conflict of interest and access to information, further specified the problem of corruption claiming that:

“The general attitude of the authorities to corruption is reactive rather than proactive. Greater efforts to prevent, detect and effectively prosecute corruption are needed [...] Corruption in Croatia is aided by a lack of good governance, transparency and accountability in public administration and by a lack of ethic codes and codes of conduct in the public and private sector” (*Screening Report*, 2007: 21).

When it comes to the Conflict of Interest Prevention Commission, the screening report recognizes its importance, but does not go any further regarding its capacities to perform its role, other than claiming that “law for the prevention of conflict of interest should be revised in order to ensure the application of effective, proportionate and dissuasive sanctions [...] The law should be turned into an effective instrument for fighting high level and political corruption” (*Screening Report*, 2007, p. 21).

### **Case 3: Information Commissioner**

Even though the area related to access to information that subsequently led to the creation of the Information Commissioner has been a part of Chapter 23, the screening report did not provide any details regarding this issue; therefore, one might claim that the establishment of this body was not considered as priority for the EU, at least in the initial stage of accession negotiations.

#### *Part II of the causal mechanism: formulation of PoE-related policies*

The empirical findings from Croatia suggests that aside from the epistemic community that was a part of the negotiating structure, there was a significant number of actors, mostly from NGO sector who worked on matters related to identified weaknesses who were not consulted or asked to take part in working groups. As referenced in the results of the National Foundation for Civil Society Development survey from 2009: “44% of civil society organizations stated they had not followed the negotiation process in their field of work, stating as the main reason that they did not receive invitations for discussion on subjects related to the negotiations [...] as well as a lack of access to basic information” (Šeperić, 2011, p. 466). Also, the information gathered through field research

indicate that only those experts who were chosen by the state were allowed to participate in negotiations, while for others the process was rather closed (Interview, representative of NGO #1). Furthermore, to present their opinions, members of civil society often had to put their lobbying and advocacy activities toward the EU, rather than directly communicating with representatives of the Government (Interview, representative of NGO #1). Therefore, one might argue that the Croatian accession negotiations witnessed the creation of two parallel structures of epistemic community that worked on the same issues; the first one participated officially in negotiations and preparation of negotiating positions, courtesy of their membership in working groups; the second was gathered around civil society organizations, including members of academia and experts, who organized its work in less formal way and was focused more on advocacy.

After the epistemic community has been formed, the next link in the causal mechanism were organized public consultations and discussions where actors had an opportunity to deliberate about their solutions to critical chapters. However, in order for public consultations and discussions to be organized, domestic actors, including the epistemic community, had to follow the predefined route set by the EU, that is, the framework which did not allow much of the divergence in terms of formal content and requirements set in the chapters (Interview, representative of the National Committee #1; representative of Academia #1). The content of the chapters relevant for the emergence of PoE, as well as the requirements of the EU that served as guidelines for policy formulation, are best located in the European Commission's annual progress reports (OM11) and, subsequently, in the accounts of the EU demands (OM12) when it comes to Chapter 5 and Chapter 23. The findings of the 2005 and 2006 progress reports are complementary to the conclusions from screening reports; they indicate that the country needs to formulate its

policies as well as the new acts and laws to battle the general problem of corruption. Therefore, not much has been said about the establishment of independent regulatory bodies.

In Chapter 5, the Commission asked the country to organize its public procurement system in accordance with the EU *acquis* (*Progress Report*, 2006, p. 30), while in Chapter 23 it asked for further “clarifications on the Right of Access to Information Law [and it advised that] the scope of the Law for the Prevention of Conflict of Interest should be widened to ensure proper sanctions can be applied” (*Progress Report*, 2006, p. 52). In later reports the Commission formulated its requirements more explicitly with direct mentioning of bodies that are supposed to enforce the new laws. Taking this into account, the influence of the EU conditionality in three areas varied in terms of formal requirements: while the formulation of the Law on the State Commission for Supervision of Public Procurement Procedures was heavily influenced by the *acquis* that the country had to adopt, the role of the Conflict of Interest Prevention Commission was regulated by political conditionality, not by directives that had to be transposed (Interview, representative of PoE #2). This left the formulation capacities of the domestic actors significantly different, with the public procurement system being formally under the framework of the EU, while the conflict of interest and access to information areas allowed epistemic community to introduce their own solutions.

The progress reports would serve as a foundation for public discussions and consultations (OM13) between the representatives of the Government and epistemic community. Apart from its role in working groups, epistemic community had participated in round table dialogues organized in the Croatian Parliament on each chapter, under the supervisory role of the National Committee for Monitoring Accession Negotiations, and these dialogues were opened for the media (Interview, representative of the National Committee #3). However, since the findings suggests that there were

two parallel epistemic communities, the representatives of the one which was not part of the negotiating structure claim that discussions and consultations were actually a closed process (Interview, representative of NGO #1), that the Government and opposition, with supported of the National Committee, agreed to keep everything for themselves, without informing the public about the ongoing negotiations. They also decided not to publish reports of working groups (Interview, representative of NGO #2). This was made, among other things, to keep the civil society organizations that were deemed “troublemakers” away from the negotiating process (Interview, representative of NGO #3). Afterwards, those civil society organizations formed *Platform 112*, and with the help of university professors and experts in relevant fields, they shifted their advocacy efforts directly toward the EU:

“[The EU] was searching for relevant civil society organizations that had information [about the state of corruption in Croatia] [...] Civil society had a high and strong capacity to conduct policy analysis [...] We have devised our own negotiating process [with regards to Chapter 23] with benchmarks we though should be met and shadow reports on our benchmarks” (Interview, representative of NGO #1).

“We managed to reconstruct these 10 criteria [included in Chapter 23] and formed [our] arguments in the language adjusted to the EU officials [...] These reports were prepared and sent to the Commission [...] which turned out to be interesting enough for the EU representatives [...] and subsequently raised their willingness to talk to us in person once they come to Croatia” (Interview, representative of NGO #2).

### **Case 1: State Commission for Supervision of Public Procurement Procedures**

When it comes to the public procurement area, the progress reports underlined the significance of the State Commission for Supervision of Public Procurement Procedures, its insufficient administrative capacities and the need to make amendments to the Law that regulates the State



Commission's work (*Progress Report*, 2008, p. 33). Furthermore, the reports recognized that "public procurement remains a major source of potential and actual corruption" (*Progress Report*, 2009, p. 54). Concerning the involvement of the domestic epistemic community in the formulation process in this area, the evidence gathered through fieldwork are scarce, indicating that public procurement has only been a part of the larger demands on how to battle corruption, but the role of the State Commission was not explicitly addressed by the epistemic community. This is the case, mostly due to the fact that the public procurement system had to be formally aligned with the EU acquis through the transposition of directives defined within Chapter 5 (Musa, 2019, p. 190); therefore, the efforts of the domestic epistemic community to influence this area were limited.

### **Case 2: Conflict of Interest Prevention Commission**

As for the conflict of interest area, the progress reports asked for strengthening of the supervisory role of the Conflict of Interest Prevention Commission (*Progress Report*, 2007, p. 50), as well as its administrative (*Progress Report*, 2008, p. 53) and preventive capacities (*Progress Report*, 2009, p. 54). Contrary to public procurement, the involvement of the domestic epistemic community was more pronounced in this area, while their requirements have been complementary to those from the EU, with the latter asking, in line with the conclusions from progress reports, further depoliticization and strengthening of the institutional set up of the body, mostly to counter the existing practices of appointing politically connected people in supervisory boards of companies (Interview, representative of PoE #1). This faced reluctance from the domestic political elites because it "was common practice that either at the state or local level, [political parties] name their members in supervisory boards of companies [...] who would receive compensation for raising their hands according to what party says" (Interview, representative of PoE #1). The epistemic

community, gathered around Platform 112, presented their requirements in two main points (OM15):

- “Mandatory declaration of conflict of interest and its effective prevention not only in relation to public officials, but also senior civil servants;
- Changing the manner of electing members of the Conflict of Interest Prevention Commission in which the conditions for candidates must include experience and references in fight against corruption and conflict of interest” (*Ocjena reformskih...*, 2014, p. 73).

According to the interviewed representative of the epistemic community, in the conflict of interest area, the European Commission “had a clear vision of what it thinks is right and its position was more or less imposed to Croatia” (Interview, representative of NGO #1); however, opposite to public procurement, this was not part of the formal *acquis*.

### **Case 3: Information Commissioner**

Concerning the access to information, the initial progress reports did not suggest the introduction of the specialized body that would carry out the Law on Access to Information; rather, they warned about the lack of transparency in public administration (*Progress Report*, 2007, p. 50) and said that the current law still required changes (*Progress Report*, 2009, p. 54). However, according to the findings gathered through interviews, this area witnessed “an authentic bottom-up approach by civil society” (Interview, representative of NGO #2). The establishment of the Information Commissioner was eventually a result of advocacy activities of NGOs, mostly those gathered around Platform 112. In their shadow reports (OM15), they claimed that the previous iterations of the Law on Access to Information were insufficient and that “proportionality test and test of public interest are not conducted; [therefore], it was necessary to change the Law” (Interview,

representative of NGO #1). These warnings eventually made the EU officials to assess the credibility of the country's official claims and convinced them that the only viable solution to secure the proper application of the Law is the establishment of the independent body (Interview, representative of NGO #2). The demands from Platform 112, ultimately, found their place in one of the last progress reports issued by the European Commission, which made the Croatian political elite to accept suggestions from epistemic community (Interview, representative of NGO #1).

### *Part III of the causal mechanism: adoption of the new laws*

The consensus between actors included in public consultations and discussions, that is, political elite, on the one hand, and epistemic community, on the other hand, was not reached immediately. According to the interviewed representative of academia: “political actors used the opportunity of [...] public consultations and discussions to show the negotiators that they are open to criticism and alternative proposals, to show their commitment to the negotiation process and true reforms” (Interview, representative of Academia #1). Based on information gathered through interviews, the consensus among the domestic actors was reached only after the new Government (2009-2011), led by then-Prime Minister Jadranka Kosor, took a firm stance against the corruption and put the Croatian membership in the EU as its number one priority. It was the willingness of Kosor's government to close Chapter 23 that influenced the substantive changes in national legislation (Interview, representative of NGO #2), especially with regards to conflict of interest and access to information. However, it needs to be mentioned that the consensus on three areas analyzed in this project also differed and to a large extent reflects what the findings from the formulation stage suggest.

### **Case 1: State Commission for Supervision of Public Procurement Procedures**

Public procurements did not require a nation-wide consensus due to the fact that it had to be formally aligned with the EU acquis; this did not leave a large discretion area for national actors, regardless whether they are the political elite or epistemic community, when deciding either on formulation or adoption. Also, one of the reasons why public procurements were not so much a matter of the debate was because the work of the State Commission for Supervision of Public Procurement Procedures enjoyed less public attention and, subsequently, it did not produce the same amount of political interest from political elite or epistemic community. Eventually, the new law on the State Commission was adopted in 2010 (OM18) which included Directive 89/665/EEZ and 92/13/EEZ (OM17); however, it was changed in 2013 when another law was adopted (OM18) but this time it incorporated Directive 2007/66/EZ (*Zakon o Državnoj komisiji...*, 2013) (OM17).

### **Case 2: Conflict of Interest Prevention Commission**

The role of the Conflict of Interest Prevention Commission was heavily debated among domestic actors because before the adoption of the new law, the Commission was functioning as an internal body of the Croatian Parliament with much of its members being the members of the parliament (Interview, representative of PoE #2); thus, it was highly politicized with the political elite aiming to keep this structure, while the epistemic community pressured for more independence and professionalization when it comes to election of the Commission's members. Kosor "made an effort to change the institutional framework [of the Conflict of Interest Prevention Commission]; it was no longer an ad hoc parliamentary body, but permanent, professional, independent and

autonomous state body” (Interview, representative of PoE #1). This finding is augmented by the evaluation from the European Commission on the improvements in the conflict of interest area that a country has made, most of all, by the 2010 Progress Report which indicates that the “internal structure of the [Conflict of Interest Prevention Commission] has been changed in order to give the Commission further independence from the parliament” (*Progress Report*, 2010, p. 51). These changes were in line with the demands of epistemic community whose representatives also participated in working group (OM16) in charge of drafting the new law on conflict of interest that was adopted in 2011 (OM18). As stated by representative of epistemic community who was part of this process:

“State secretaries or officials have led that working group and they would be people from different ministries [...] but there would also be professors and two or three people from civil society [...] they accepted a lot of our suggestions and we felt it was a great [opportunity] for us to influence legislation” (Interview, representative of NGO #3).

### **Case 3: Information Commissioner**

The consensus on access to information also witnessed divergence in opinions between political elite and epistemic community. Even though the agreement on the necessity to introduce a new law was achieved, the contrasting solutions were proposed when it comes to body that should implement the law. Therefore, the law was supposed to be enforced either by the existing Croatian Personal Data Protection Agency or by the entirely new autonomous and independent body, with advocacy activities of NGOs favoring the latter solution (Interview, representative of PoE #2; representative of NGO #1). Eventually, as it was the case with conflict of interest, the decision of then-Prime Minister Kosor to finalize the accession negotiations was crucial. After EU officials

became aware of the scope of the problem and with the solutions that the Croatian NGOs were suggesting during the formulation stage, the EU put additional pressure on the Government to establish an independent body, which eventually led Kosor's government to introduce the Information Commissioner in 2013 (Interview, representative of NGO #2). According to the interview of representative of PoE who was included in working group designated for drafting the new law on access to information (OM16), the process was inclusive and it included members of both academia and civil society (Interview, representative of PoE #2). Even though it is not considered to be a part of the formal *acquis*, with the implementation of the new law on access to information (OM18), the Directive 2003/98/EC (OM17) on the re-use of public sector information was transposed (Musa, 2019, p. 190).

*Outcome: established independent regulatory bodies*

**Case 1: State Commission for Supervision of Public Procurement Procedures**

**Case 2: Conflict of Interest Prevention Commission**

**Case 3: Information Commissioner**

Once the new legislation was introduced: in 2010, for the State Commission for Supervision of Public Procurement Procedures; in 2011, for the Conflict of Interest Prevention Commission; and 2013, for the Information Commissioner, it was widespread perception that the Europeanization process was responsible for empowering these bodies with capacities to perform their respective tasks (OM20). However, as acknowledged by interviewees who had a better insight into these processes, the new laws that guaranteed more power needed to be accompanied with the new people who would take the most responsible roles. In case of the State Commission for Supervision

of Public Procurement Procedures, the Croatian government suggests a person to the Croatian Parliament which afterwards appoints this person on the position of the president of the State Commission (Musa, 2019, p. 198). In case of the two other bodies, an open procedure is at hand, with anyone who fulfils the formal criteria can apply for the open call, and later needs to be appointed by the Croatian Parliament (Musa, 2019, p. 198). This happened in 2013 when the two bodies got independent experts in charge (OM19) that coincided with the Croatian accession to the EU.

## Chapter 5. Discussion and Conclusion

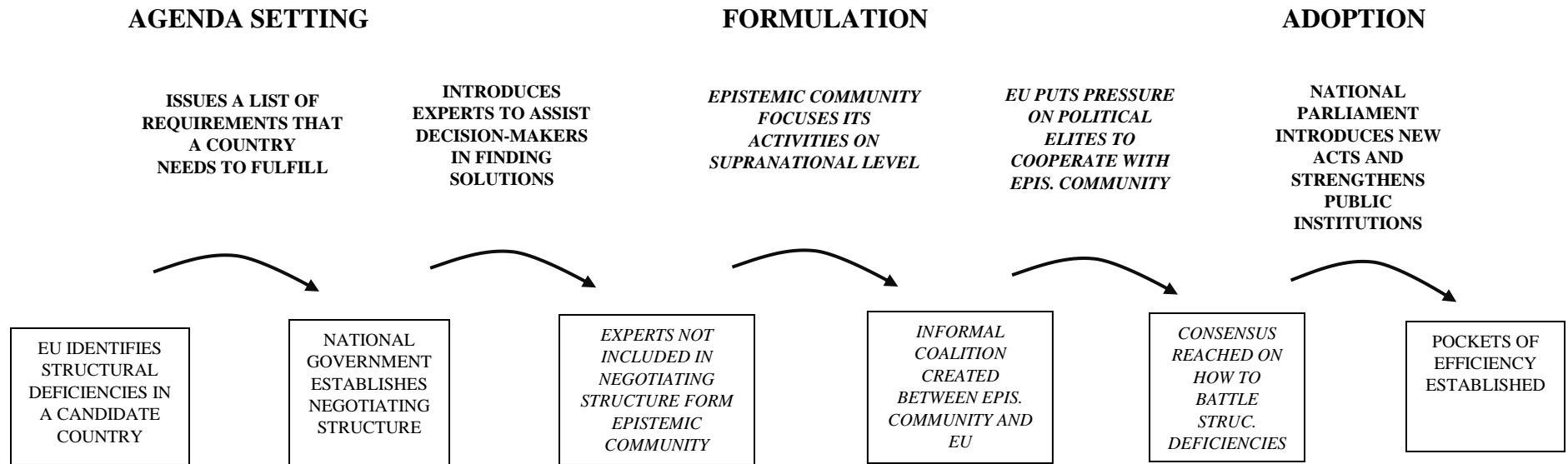
Before concluding remarks, a short comparison of the three cases will be provided. As evidenced by the collected data, two of the most important factors that influenced the interaction between the EU and domestic epistemic community and subsequently the emergence of PoE were: (1) strength of conditionality, i.e., formal – *acquis* or informal – political conditionality; (2) the degree to which the issue (in the case study: the two respective chapters (5 and 23)) were considered critical by domestic epistemic community. According to this, the three investigated bodies diverge when it comes to the causal mechanism that led to their strengthening or creation. The State Commission for Supervision of Public Procurement Procedures was part of the formal conditionality; therefore, the Croatian political elite had no choice but to implement the EU *acquis* as it was predefined. The domestic epistemic community was part of this process, but only within the scope of the negotiating structure, particularly, working group dealing with Chapter 5. The evidence collected during the fieldwork suggests that the Croatian public was not so much interested in the public procurement area; thus, the mobilization of non-governmental actors was weaker. Taking this into account, one might argue that the emergence of the body followed the theorized causal mechanism.

The Conflict of Interest Prevention Commission and the Information Commissioner, both of which were discussed under Chapter 23, witnessed somewhat different approach. Here, the EU conditionality was at hand, but not in terms of formal content and legislation that the Croatian government had to transpose, but political pressure to tackle issues related to conflict of interest and access to information, which made the domestic epistemic community more interested and willing to participate in the accession negotiations. However, since Chapter 23 was considered critical, the political elite decided to withheld the information and keep the process closed. This



influenced the formation of the parallel epistemic community which was not a part of the negotiating structure and that eventually participated both in the formulation and adoption stages, but predominantly through the interaction with the EU. Only after the EU put pressure on the political elite to finish accession negotiations, they were willing to hear from the epistemic community and reach consensus. When comparing the emergence trajectory of the two bodies to the one previously discussed, it is evident that a modification of the causal mechanism is required, especially in the formulation part. Therefore, Figure 2 offers a look at second causal mechanism.

**Figure 2.** Second causal mechanism of PoE's emergence.



Source: own illustration.

In conclusion, the goal of this project was to answer the research question: Why and how do pockets of efficiency emerge? In addition, there were three sub-questions; the first two referring to the role of external and domestic actors in PoE's emergence; while the third aimed to explore their interaction during the same process. Since PoE literature focuses almost entirely on domestic-oriented explanations to PoE emergence, with Tandler (1997) and Roll (2011) being the minority who investigated the relationship between actors, albeit domestic, the project decided to rely on the Europeanization literature to explore the influence of the external actor. To this end, the external incentives model by Schimmelfennig and Sedelmeier (2004) and the coalition model by Jacoby (2006) were taken into account. The former focuses on EU conditionality as the main tool on how the EU influences institutional changes in a candidate country, especially when it comes to CEE countries. The latter explores the relationship between the external and domestic actors; however, the domestic actor is considered as faction that aims to establish institutional change. By theorizing a causal mechanism on PoE emergence during a country's path toward the EU membership and through the method of process tracing, the findings showed that both models are suitable in relation to the three investigated PoE in Croatia.

The external incentives model was used to depict how the EU conditioned the Croatian membership in the community by putting forward the idea of stronger independent regulatory bodies; the coalition model explained the interaction between the EU and the domestic epistemic community once the latter began to pivot its advocacy activities international. Thus, the answer to the main research question is as follows: PoE in Croatia emerged mostly due to the influence of the EU to introduce legislative changes in three respective areas. Since the State Commission for Supervision of Public Procurement Procedures and the Conflict of Interest Prevention Commission

already existed from 2003 and 2004, it was suggested that they would be strengthened through the new laws. When it comes to the Information Commissioner, it was also EU conditionality at hand, but without a clear vision of how the regulatory body should look like. However, in both the conflict of interest and access to information areas, there was a notable push from the domestic epistemic community to influence the policy process; therefore, it first interacted with the EU and later with political elites in creating an institutional framework that would guarantee the strength of the two latter bodies.

The findings of this research are relevant for both PoE and Europeanization research streams, most of all, in how non-state actors, in this research conceptualized as the epistemic community, can interact with the external actor and domestic political elite to achieve the institutional change through bottom-up approach. While PoE literature has not been investigating such interaction, the Europeanization literature prioritized the impact of the EU; therefore, this research is novel in its approach and insights. It is also relevant for the current developments surrounding potential EU enlargement, with the focus being on Ukraine, Georgia and Moldova. After all three countries expressed their desire to join the EU, it is yet to be seen whether the EU will opt for the accelerated process which may leave the non-state actors out of the equation due to the urgency of the procedure. Nevertheless, this research showed that non-state actors can find other strategies and help the political elite in battling structural deficiencies and modernizing public organizations, especially when it comes to establishing of efficient regulatory bodies; thus, contributing to the transnational integration of “periphery” countries.

The weakness of the research could be discussed in terms of internal validity of findings. First, due to the fact that many documents related to the Croatian accession negotiations that would prove useful are considered confidential and almost impossible to get. Second, most interviewees

did not have the same amount of information when referring to the public procurement area, compared to conflict of interest and access to information. This is almost expected and goes in line with the findings of the research that indicated the formality of negotiations under Chapter 5 and *acquis* the country had to transpose. Third, the process that this research investigated took place 10-15 years ago and interviewees had to recollect about past events; however, they provided vivid memories, while the information gathered was triangulated to minimize mistakes. Based on this research, further venues for PoE investigation could be opened, especially in other CEE countries since PoE as such is still mostly referred to in the developmental literature. Furthermore, the role of both political elites and domestic epistemic community in Croatia could be examined, but in the post-conditionality period, once there was no longer the influence of the EU to sustain PoE.

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### **Conducted interviews (in chronological order)**

Representative of Pockets of Efficiency #1, interview conducted on April 1, 2022.

Representative of Pockets of Efficiency #2, interview conducted on April 7, 2022.



Representative of the National Committee #1, interview conducted on April 9, 2022.

Representative of NGO sector #1, interview conducted on April 9, 2022.

Representative of the National Committee #2, interview conducted on April 13, 2022.

Representative of NGO sector #2, interview conducted on April 14, 2022.

Representative of the National Committee #3, interview conducted on April 14, 2022.

Representative of Academia #1, interview conducted on May 8, 2022.

Representative of NGO sector #3, interview conducted on May 11, 2022.