



# Studienabschlussarbeiten

Sozialwissenschaftliche Fakultät

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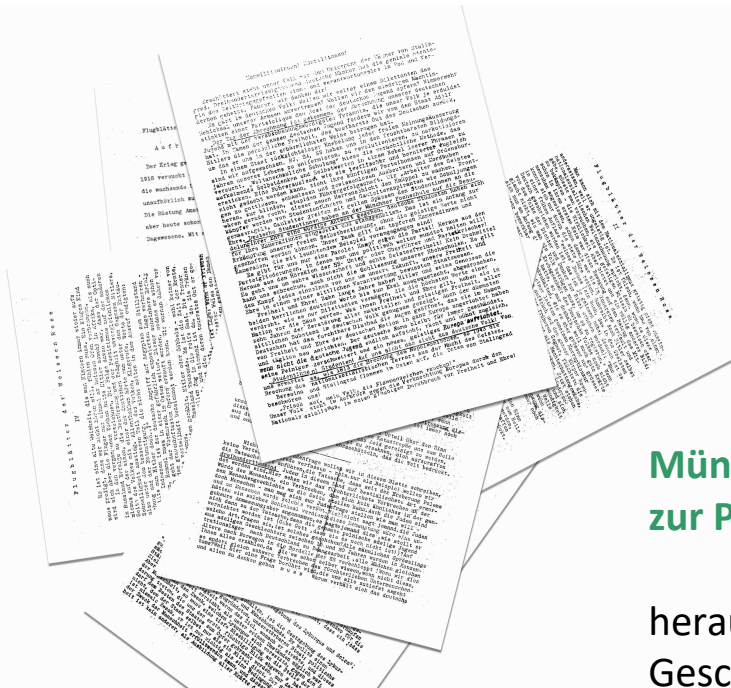
Norm transfer in the EU Association and Accession Process – Moldova's Human Rights policies between Progress and the "Russkij mir"

**Bachelorarbeit, Sommersemester 2024**

Sozialwissenschaftliche Fakultät

Ludwig-Maximilians-Universität München

<https://doi.org/10.5282/ubm/epub.119715>



## Münchener Beiträge zur Politikwissenschaft

herausgegeben vom  
Geschwister-Scholl-Institut  
für Politikwissenschaft

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**2024**

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and Accession Process – Moldova’s  
Human Rights policies between  
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Bachelorarbeit bei  
Prof. Dr. Berthold Rittberger  
2024

## Table of contents

<b>1</b>	<b>Introduction</b>	<b>1</b>
<b>2</b>	<b>Theoretical Framework</b>	<b>5</b>
2.1	The External Incentive Model	5
2.2	Differential Empowerment	7
<b>3</b>	<b>Research design</b>	<b>11</b>
3.1	Theory-Testing process-tracing	11
3.2	Observable implications	13
<b>4</b>	<b>Moldova’s anti-discrimination legislation in the context of its EU association process</b>	<b>20</b>
4.1	Determinacy	20
4.2	Credibility	22
4.3	Differential empowerment	24
4.4	Cost-benefit analysis	28
<b>5</b>	<b>Moldova’s anti-discrimination legislation in the context of its EU accession process</b>	<b>29</b>
5.1	Determinacy	29
5.2	Credibility	31
5.3	Differential empowerment	32
5.4	Cost-benefit analysis	35
<b>6</b>	<b>Conclusion and discussion</b>	<b>37</b>
	<b>Appendix</b>	<b>39</b>
	<b>Publication bibliography</b>	<b>41</b>
	<b>Eidesstattliche Erklärung</b>	<b>53</b>

### List of figures:

<i>Figure 1: Causal mechanisms linking quality factors of External Incentives to Domestic adoption costs</i>	<b>10</b>
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# 1 Introduction

Human rights and non-discrimination are at the heart of the values upheld by the EU according to Article 2 of the Treaty on European Union (TEU), which posits that the EU “is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities” (TEU, revised 3/1/2020).

The rights of LGBTI<sup>1</sup> people are part of this engagement. Sexual orientation is, in this sense, an explicit part of the framework of European Law being mentioned in the TEU, the European Charter of Human Rights and the Treaty on the Functioning of the European Union. Gender identity is more diffusely protected through general anti-discrimination norms and is often subsumed under other norms, such as the prohibition of discrimination based on sex by the European Court of Justice (Lashyn 2022; European Commission 2024b). Based on these commitments the EU also has a long history of promoting LGBTI-related non-discrimination in its external relations with third states and the accession process (Thiel 2022).

This approach might have been particularly fruitful in the Republic of Moldova, which signed an Association Agreement with the EU in 2014 and became an official candidate country in June 2022 following Russia’s invasion of Ukraine (European Commission 2024a). During this period, Moldova went from being one of the lowest-ranked countries in the ILGA-report on the state of LGBTI rights in European countries, coming 46<sup>th</sup> out of 49 countries in 2013, to being placed 24<sup>th</sup> out of 48<sup>th</sup> in 2024, even surpassing most countries that joined the EU between 2004 and 2007 (ILGA-Europe 2024a, 2013).

The passing of strong anti-discrimination legislation that prohibits discrimination based on sexual orientation and gender identity in 2023 by Moldova’s pro-EU government and President contributed to this substantial improvement (ILGA-Europe 2024b). A similarly comprehensive anti-discrimination law had already been proposed by the Moldovan government in 2011 but was subsequently amended, due to broad societal and political opposition, to only include

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<sup>1</sup> The given work, with the exception of the appendix, will use the acronym LGBTI considering that this form has been adopted by EU institutions (Thiel 2022, p. 17).

discrimination based on sexual orientation in the employment sector when it was passed in 2012 (Radio Europa Liberă Moldova 2022; Știri.md 2023a).

The difference in outcomes between 2012 and 2023 is puzzling with opinion polls indicating that the level of rejection faced by LGBTI people in Moldova is still generally higher than in all current EU member states. Those favoring an extension of the community's rights are still consistently less than 20% of the population when for example considering questions on whether respondents support gay marriage, rainbow families, the right of LGBTI people to free expression and the associations they make with LGBTI people (Institutul de Politici Publice 2014; Consiliul pentru prevenirea și eliminarea discriminării și asigurarea egalității din Moldova and OHCHR 2015; Pew Research Center 2017; imas 2021; Institutul de Politici Publice 2024; European Commission 2023a). Being aware of the topic's continuously high contentiousness, it is reasonable to assume that domestic demand for comparatively progressive anti-discrimination legislation was low. It is thus worth looking at the EU's promotion of human rights in Moldova, taking into account that the law's adoption and the strengthening of EU-Moldova relations coincided.

The theoretical tool that will be used to analyze the impact of the different phases of Moldova's EU integration process on the adoption of the respective anti-discrimination laws is the External Incentives Model by Schimmelfennig and Sedelmeier (2004) because it makes it possible to analyze and differentiate the quality of EU conditionality. The Model does so by assuming that whether compliance occurs ultimately depends on EU incentives making rule-adoption less costly than non-compliance for all domestic veto players. The likelihood of this being the case is influenced by how determinate a condition is and by how credibly the connected rewards and threats are voiced since it influences how domestic actors assess the consequences of their actions. Furthermore, the size of the reward, the speed with which it can be delivered, and the number of veto-players are essential.

This is analyzed in the context of the influence that the EU's incentives have on the domestic debate going of the idea that actors who favor LGBTI rights could be differentially empowered by the fact that their otherwise unpopular ideas are now connected to the widely desired benefits of EU integration (Wunsch 2016). This assumption will be assessed against the prospect of pro-

EU political actors being cornered and rather disempowered by their obligation of pushing through unpopular legislation, which has also been observed in some cases. Going off the positive outcomes, a certain degree of differential empowerment could be expected for both periods, but it should be bigger in the second one. The central question of this paper is, thus, if the strength of the EU's external incentives and its effect on the domestic power balance through discourses can explain the outcomes of the two periods and the disparities between them.

This will be analyzed with the help of theory-testing process tracing, which aims to prove that the hypothesized causal mechanism functioned as expected in causing the outcomes. To do so, observable implications will be defined that point to the existence or absence of different factors of the External Incentive Model and differential empowerment. These will be contextualized, and the impact of the observation or non-observation of a given factor will be explicitly stated.

Building on this, two empirical analyses will be carried out to see whether the defined observable implications were present in the two periods, with the first analyzed period representing Moldova's EU accession process ranging from 2010 to 2014 and the second one beginning after Russia's full-scale invasion of Ukraine on the 24.02.2024. The invasion was an impactful exogenous shock that Russian propaganda discourses portrayed as a struggle of the orthodox and traditional "Russian World" (Ruskij Mir) against the "decadent West" and its freedoms for LGBTI people spreading to Ukraine (Rocca 2022). The given work thus contributes to a growing segment of scholarship focusing on the impact of new geopolitical realities on the EU's policies with a specific focus on enlargement. Its will analyzing the periods around the adoption of the two pieces of anti-discrimination legislation. To retrace the cost-benefit assumptions of domestic actors, posterior evidence falling into the mentioned period will also be provided wherever it holds contextualizing value and/or gives insight into the EU-Moldova relationship or the domestic discourse of the period starting from the assumption that these did not drastically change in such a short period. The empirical data relating to each factor will subsequently be discussed in a section dedicated to putting them into the context of the cost-benefit analyses of domestic veto players, considering that the impact of incentives can only be understood when assessed against the costs.

The analysis shows that, as expected, the External Incentives and the empowerment of pro-EU actors were more pronounced in the second than the first phase and that, in both cases, there are reasonable grounds to assume that these were impactful enough to surpass the adoption costs of the norm in its two respective forms. Interestingly, in both periods, only the idea of the law's adoption itself was differentially empowered since the responsibility for it could be externalized to EU conditionality. A striking difference between the two periods was manifest in that around 2012, pro-EU actors were substantially disempowered with their opponents using the law's low level of approval to attack them, leading to coalition members firmly distancing themselves from the law. While pro-EU actors still had a more difficult time than pro-Russian ones maneuvering the topic in 2023, this did, if even, only marginally relate to the barely discussed anti-discrimination law. The latter still used the topic of LGBTI rights often but only talked about even more contentious aspects in the second phase. The fact that false information about the EU's demands formed an essential part of the discourse in both periods showcased that the strength of differential empowerment does not solely depend on the quality of the EU's incentives.

## **2 Theoretical Framework**

The following chapter explains the theoretical framework used to answer the given research question. It builds on a broader literature on Europeanisation, which, at the most basic level, refers to processes that “involve a response to the policies of the EU” (Featherstone 2003, p. 3). The contexts in which this can occur are manifold, ranging from the impact of EU norms on its member states to those in its neighbourhood (Bauer et al. 2007, pp. 406–407).

In the case of the EU, a particularly relevant strategy of norm promotion is conditionality, which is based on the EU manipulating the cost-benefit analyses of domestic stakeholders with regard to the adoption of a policy. By making compliance more attractive than other options, the EU has shaped regime structures and policies in many countries, showcasing the considerable impact conditionality can have (Vachudova 2005). On the other hand, there have also been instances of noncompliance that have given rise to research that tries to explain the conditions and circumstances facilitating successful conditionality (Schimmelfennig and Sedelmeier 2020). Subsequently, an analytical scheme that analyses the efficacy of the EU’s conditionality through its impact on domestic cost-benefit calculations and discourses will be presented (see Figure 1).

### **2.1 The External Incentive Model**

The External Incentive Model by Schimmelfennig and Sedelmeier (2004) is a key approach in the analysis of EU conditionality. It upholds the idea that the purpose of conditionality is to influence the utility calculations of key domestic actors and it explains variation in outcomes by looking at the quality of the EU’s conditions as well as domestic and international political circumstances. Something to be aware of when applying the model is that what ultimately matters in obtaining compliance is obtaining favorable decisions by all domestic veto players based on individual cost-benefit analyses. None of the factors mentioned in the following can thus be seen as necessary or sufficient conditions and always have to be seen within their context.

The impact of EU demands, first of all, depends on the size of the reward. While what is viewed as desirable is undoubtedly context-dependent EU membership is generally seen as the biggest possible reward (Vachudova 2005, p. 65). Another crucial factor is how soon the country in



question will be able to reap the fruits of its actions with rewards situated in the near future being more effective than long-term ones (Schimmelfennig and Sedelmeier 2004, p. 665).

The quality of a demand is furthermore thought to depend on its determinacy. The notion of determinacy stipulates that conditions are more likely to be met when states know exactly what they should do due to the existence of detailed instructions. It also measures how clear the priority status of a demand is in relation to others. The latter is often of particular importance, considering that processes such as association and accession negotiations consist of the simultaneous application of conditionality with regard to many policies (Schimmelfennig and Sedelmeier 2020, p. 817).

A particularly important condition, moreover is that the threat of withholding the reward and the promise of granting it have to be credibly expressed. The basic condition that underlies the credibility of both is the target country's asymmetric dependence on the EU (Schimmelfennig and Sedelmeier 2020, p. 823). While this condition is evidently given in its relations with its candidate states the credibility of the EU's threats and its leverage could be lessened in instances of cross-conditionality. In such a situation, the EU would not be the only partner available to the target country, which might empower the state in question to obtain the desired reward from a partner who imposes other conditions preferred by domestic actors or none. Cross-conditionality could nevertheless also take a more complicated turn if the sender of competing norms tried to disincentivize compliance with EU demands by threatening to take measures that are disadvantageous to the state on which conditionality is applied in case it fulfills the EU's requests (Hagemann 2013).

The EU's negotiation position, and thus the threat's credibility, could also suffer from the existence of vital EU interests of geopolitical, security or any other nature on which the accession or association candidate might have influence. This might lead to the EU deprioritizing demands for domestic reform to not put other values, such as regional security, in jeopardy. An ensuing inconsistency in the EU's rewarding behavior would hurt the credibility of future threats by showcasing that non-compliance can be remedied by, for example, fulfilling security-related demands. The impact of these two conditions is significant when considering that they are likely to occur together in cases of geopolitical rivals competing over having the recipient

of conditionality on their side. Whether this is the case has to be individually determined because some countries or governments do not have a cost-efficient option of playing both sides against each other. On the flipside, competing interests could also increase the credibility of the promise by giving the EU a stake in the admission of a certain country, which could also motivate it to speed up the process. The size, speed, determinacy and credibility of a demand shape the strength of the External Incentive that then needs to be assessed against the domestic costs of adoption. When there are several veto players, the distribution of costs between them is also important (Schimmelfennig and Sedelmeier 2004, p. 666).

From the theoretical arguments that have been evoked so far, the following hypothesis can be deduced:

H1: Compliance with EU demands can be explained by strong external incentives that sway the cost-benefit analyses of domestic veto-players

## **2.2 Differential Empowerment**

Apart from the direct influence that external incentives have, the conditionality applied by the EU can also increase pressure for rule adoption internally. This is hypothesized to happen through the empowerment of internal political or societal norm entrepreneurs (Börzel and Risse 2003).

This empowerment can take on three different forms, according to Wunsch (2016). It firstly happens because of increased access to resources due to the EU's political support. Secondly, the EU also amplifies the channels of influence that domestic norm entrepreneurs have giving them the possibility of communicating with the EU, which might, in turn, exert meaningful pressure on governments (Wunsch 2016, p. 1202).

This work will focus on differential empowerment through the possibility of framing policies as part of EU conditionality (Wunsch 2016). The competitive advantage of this is based on the idea that norm entrepreneurs will have a basis to create the impression among voters that their EU-related benefits are at stake in case of non-compliance. Voters could thus not just be convinced to support a specific policy or vote for a certain party because of arguments that

support its content but also due to its connection to the EU integration process in which they are stakeholders (Levitsky and Way 2010, p. 47). Besides this norm entrepreneurs might also have an easier time justifying the content of policies related to conditionality by framing them as part of a qualitatively superior EU value system with which conformity is desirable (Kahlina 2015).

The one-sided idea that EU conditionality would per se lead to the differential empowerment of pro-EU actors should nevertheless be approached with caution, considering that some analyses have shown that the EU's support of domestically unpopular and contentious policies has even made the situation for pro-EU politicians more difficult by putting them in a situation where they are obligated to defend a policy rejected by a majority in some cases. Such unpopular stances lend themselves to being instrumentalized by a possibly anti-EU opposition that might have more to win from using the topic (Shevtsova 2020).

Furthermore, the topic's salience might increase due to instances of outside-in politicization in which a policy promoted by the EU becomes politicized internally with regard to its content and/or the fact that it is being formulated as an external condition (Thiel 2022, p. 34). While the former is already complicated in the case of unpopular policies, the latter can amplify pre-existing aversions, making it possible for opponents to frame a topic within the context of a supposed threat to sovereignty. Such sovereignty-centered discourses are further fueled by the dichotomy between progressive and regressive states that the EU's promotion of human rights norms might convey, providing a basis for Us vs. Them discourses (Thiel 2022). Such unintended consequences could affect not just political but also societal actors. In cases of increased salience and attempts at discrediting the EU by linking it to unpopular policies, norm entrepreneurs might paradoxically be drawn to strategically avoiding links between their activism and the concept of the EU if they desire further integration to avoid discrediting the EU domestically (Shevtsova 2020, p. 505).

These two possible outcomes of conditionality on domestic empowerment do not exclude each other. They can even be sequential, according to some. Ayoub (2017) argued that political backlash against improvements in the legal status of the LGBTI community can be part of the long-term norm internalization process. He assumes that increased visibility will lead to a

backlash where there is a strong perception of LGBTI rights as a threat that will nevertheless not be able to stop the internalization of pro-LGBTI norms in cases where norm visibility is high. Whether differential empowerment favors norm entrepreneurs promoting European values and pro-European politicians depends on various factors. An important factor is how popular the EU is and how close a country's national identity is to Europe. In countries with a desire for EU benefits and identification with it, the mentioned Us vs. Them discourses are less sustainable (Kahlina 2015). While there might still be discourses opposing LGBTI rights in such cases, these would have to balance the risk of going against a popular project tied to domestic national identity (Shevtsova 2023).

A country's geopolitical situation is also crucial in this context. This stems from the fact that increased identification with an actor that promotes LGBTI rights or possibly homo- and transphobia can also depend on the political relationship with that actor, meaning, for example, that experiences of being at war with a country might negatively impact the authority that it has as an external norm promoter if its actions are perceived to be illegitimate (Kahlina 2015). This factor is central to determining the electoral costs of potential cross-conditionality imposed by third countries. Based on the preceding, the costs of engaging in it are higher if an external norm promoter is negatively linked to domestic national identity.

The quality of external incentives can also be assumed to affect the differential empowerment of domestic actors. While cost-benefit analyses of domestic decision-makers are simultaneously being affected by the external incentives set by the EU and the differential empowerment of domestic norm entrepreneurs, the two are also interconnected. This becomes clear when considering that differential empowerment largely rests on the idea that policies perceived as being linked to EU benefits would receive more support (Levitsky and Way 2010, p. 47). There is, thus, a clear causal relationship between the external incentive and differential empowerment that also makes it reasonable to assume that the degree of differential empowerment is linked to the size, credibility and speed of rewards as well as the determinacy of conditions and the credibility of the threat (Schimmelfennig and Sedelmeier 2004). The higher the quality of the external incentive is, the more likely it is for them to create a perception among the electorate that their stakes in the EU integration process are high. Based on the beforementioned, the following hypothesis can be deduced:

H2: The magnitude of differential empowerments depends on the qualitative strength of the external incentives set by the EU

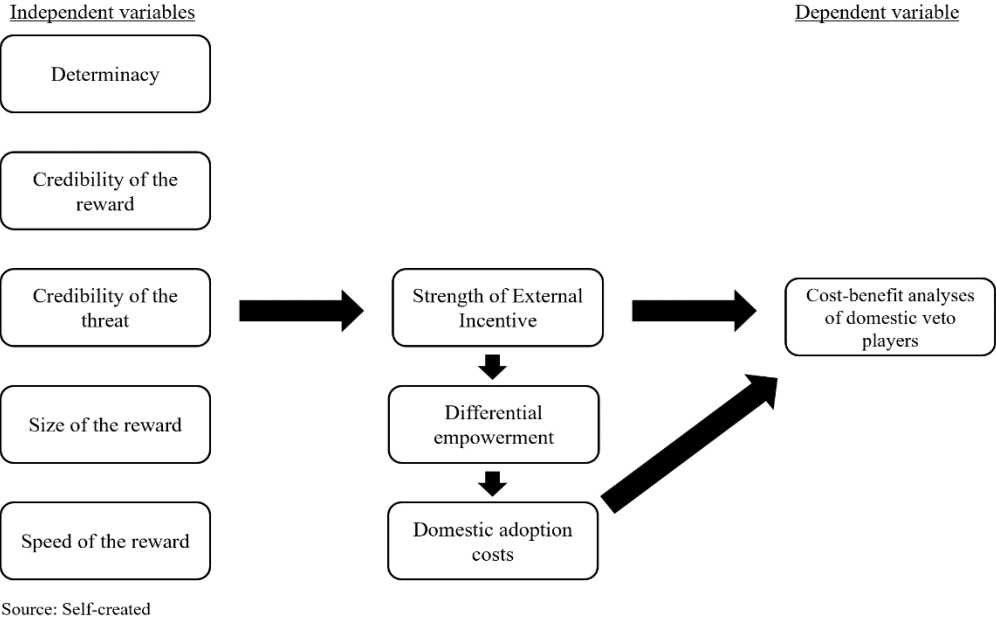


Figure 1: Causal mechanisms linking quality factors of External Incentives to Domestic adoption costs

### **3 Research design**

The next chapter explains how this work will proceed with analyzing if the outlined causal mechanism can be observed. A specific focus will be put on whether the two outcomes are linked to differing expressions of the strength of the EU's External Incentives and the connected variation in differential empowerment.

#### **3.1 Theory-Testing process-tracing**

The employed analytical tool is process-tracing. This approach is centered on proving that an independent variable (X) causally contributed to an outcome (Y). The establishment of this link is fundamentally based on analyzing the causal mechanisms that connect the two and defining observable implications that indicate its presence or absence (Mahoney 2012).

To work with process-tracing it is thus paramount to understand what a causal mechanism is. This work will be based on the understanding of causal mechanisms “as a theory of a system of interlocking parts that transmits causal forces between a cause (or a set of causes) and an outcome” (Beach 2016, p. 465). The expressed understanding goes beyond other ideas of causal mechanisms as mere sequences of events by investigating why two variables are related (Beach 2016). The parts that transmit causal force are “entities engaging in activities, although activities can also take the form of non-activity” (Beach and Pedersen 2013, p. 59). To scientifically study such processes, it is necessary to define empirically observable implications that indicate that a causal mechanism and its parts were at play in causing an outcome. This is done based on theoretical expectations (Beach 2016, p. 468). The analysis of empirical data should be guided by the questions of whether the predicted evidence was found and its reliability (Beach 2016, p. 470).

Classification systems can make it easier to assess the meaning of evidence. An instrumental one is the conceptualization of the analysis of whether a specific observable implication, that we would expect if the causal mechanism functioned as expected, can be traced as a test (Mahoney 2012). These tests can then be classified in terms of how strongly their results contribute to the confirmation and/or elimination of a hypothesis, but it is important to remember that they exist on a spectrum (Beach and Pedersen 2013, p. 102).

Regarding the classification of test quality, two widely used metrics are certainty and uniqueness. With respect to this, certainty is the degree to which the tested observable implication would have had to necessarily have been present if a particular causal mechanism had unfolded. A certain test thus strongly disproves the existence of a causal mechanism if the expected observable implications are absent. On the other hand, uniqueness refers to the probability of tracing an observable implication, assuming that the hypothesized mechanism was not at work. It heavily indicates that a causal mechanism was at work if empirical evidence is found (Beach and Pedersen 2013, pp. 102–104).

Tests with a low uniqueness and low certainty are classified as straw in the wind tests. These tests are the weakest ones. They are based on probabilistic generalizations and don't go a long way in disproving or proving a hypothesis (Mahoney 2012, p. 574). Tests simultaneously displaying high levels of certainty and uniqueness are called doubly decisive tests. Their results are a strong base for disproving and proving the occurrence of a causal mechanism (Beach and Pedersen 2013, p. 104).

Apart from these two extremes, there are also two tests whose analytical value leans towards uniqueness or certainty. A hoop test can be used to maximize certainty by testing whether a necessary condition is given. Despite being strong at disproving a hypothesis when the necessary condition is not given, this test would tell us little about whether the expected mechanism was impactful if it is passed. On the other hand, passing a smoking gun test would robustly prove a hypothesis if the expected evidence is found while barely disproving it in case of failure (Mahoney 2012). While both uniqueness and certainty should ideally be kept as high as possible, it has been argued that certainty should be prioritized in case there is a conflict between the two (Beach and Pedersen 2013, p. 104).

The given work will make use of Theory-Testing process-tracing. This type of process-tracing puts particular emphasis on the question of whether the concerned causal mechanism functioned as it would have been expected theoretically (Beach and Pedersen 2013, p. 11). This analysis is conducted deductively by inferring empirical expectations from existing theories in a context where X and Y are both known. It does not allow for a definitive conclusion on

whether the hypothesized mechanism was necessary (Beach and Pedersen 2013, p. 16). This type of process-tracing is particularly fitting for this work's purpose because it facilitates its focus on whether the differences in outcome between the two analyzed periods were accompanied by the theoretically expected different expressions of the independent variable.

### **3.2 Observable implications**

Using this framework, the following chapter will outline how the strength of the external incentives and their effect on domestic cost-benefit analyses will be measured with the help of relevant observable implications. The same will be done with regard to the relationship between the strength of the external incentives and the amplitude of differential empowerment, which also affects the domestic cost-benefit analysis.

An important starting point is that there would have to have been a relevant EU demand. This means that the EU would have had to have asked for the passing of a law including sexual orientation in the employment sector around 2012 and the inclusion of sexual orientation and gender identity as categories that generally fall under the protection of the law around 2023. Since this condition is necessary for the hypothesized causal mechanism, not observing it would prove it does not influence the outcome. The empirical material in which evidence for such demands will be searched will be official EU documents.

The next step will be to analyze the determinacy of these demands (Schimmelfennig and Sedelmeier 2020). An indicator of high determinacy would be the frequent mentioning of the condition in EU reports and statements as well as continuous feedback. The frequency of feedback and demands has to be seen in the context of the frequency of other demands. Even when putting it into this context, this condition still displays low certainty and uniqueness because some topics might take up more space due to their high regulatory complexity. This should thus only be seen as a probabilistic indicator of determinacy.

A stronger indicator of determinacy in terms of its uniqueness would be the discursive salience that can be attributed to a demand when taking a look at EU documents and statements by EU officials. This factor can be assessed by evaluating patterns in the formulations used when voicing a demand. Increased salience could, for example, be expressed by explicitly classifying a



condition as a “priority” or by calling it “key”. Whether this can be classified as a smoking gun or a straw in the wind evidence depends on how clearly the passing of the expected anti-discrimination legislation is stated to be an absolute priority in relation to other demands. The highest level of determinacy would be achieved if there was evidence of the EU presenting its demand as a *sine qua non* condition. Furthermore, clear and detailed instructions indicate heightened determinacy (Schimmelfennig and Sedelmeier 2020).

Low determinacy, on the other hand, could be indicated by the EU rarely mentioning the passage of adequate anti-discrimination legislation when giving feedback or stating its demands. As in the case of high determinacy infrequent mentions have to be analyzed as probabilistic evidence. The linguistic prioritization of other factors accompanied by a lack of prioritization would more strongly indicate a lack of determinacy ranging from smoking gun to straw in the wind evidence, depending on the magnitude.

Attention will be paid to whether potential competing geopolitical or security interests in the region stick out as priorities that lower the determinacy of demands related to the passing of the anti-discrimination law. This will be examined by scanning EU documents and official statements to find out whether these express the security-related importance of Moldova, its strategic value or significance for (regional) stability or any emphasis on related considerations on the side of the EU (Gafuri and Muftuler-Bac 2021). To account for the possible effects of cross-conditionality, this will also entail an analysis of the degree to which the EU deals with and prioritizes the question of Moldova’s policies towards great powers (Schimmelfennig 2023, p. 191). The emphasis put on security issues, and other potential competing interests will not only be put in relation to demands with regard to the anti-discrimination law but also the broader sector of human rights and democracy in order to observe broad trends. What is part of this sector will be defined in accordance with the Research Methodology of the Freedom in the World report which measures political rights and civil liberties by incorporating different dimensions of the phenomena (Freedom House 2024).

Determinacy will be considered high if the basic conditions are met and at least one smoking gun indicator can be observed without the simultaneous observation of smoking gun evidence for low determinacy. Smoking gun evidence pointing to low determinacy paired with the

simultaneous absence of any evidence for high determinacy means that there is low determinacy. If no smoking gun evidence can be found for either and necessary conditions are met for both, there is likely to be medium determinacy depending on the individual assessment of the strength of the probabilistic evidence that speaks for each.

The next factors to be tested are the credibility of the threat and the reward. A first indicator of the high credibility of the threat would be if the withdrawal or non-obtention of certain benefits would be explicitly linked to the passage of a more inclusive anti-discrimination law up to a specifically mentioned deadline or general compliance with the thematic block that it is part of in EU documents. Observing this would count as a straw in the wind test since it is not entirely certain if the EU would actually follow up on its threat. Still, it could come reasonably close to being smoking gun evidence if concrete consequences and timelines are proposed and if these are specifically linked to the passage of the law. Moreover, high credibility of the threat could be safely assumed to be given if there is a record of the EU consistently punishing non-compliance with human rights-related demands. Such observations would be particularly powerful in proving the high credibility of the threat if cases of non-compliance in the Human Rights & Democracy sector were punished in spite of security-related compliance.

Conversely, low credibility of the threat could arise from competing interests. It could be indicated by the exclusive employment of specific and contextually credible consequences for non-compliance in non-human rights-related fields. A specific focus will be put on the security sector. Smoking gun evidence for a lack of the threat's credibility would be clearly observable if there was a clear track-record of Moldova gaining access to rewards and benefits of EU conditionality with explicit reference to its positive security-related behavior while its Human Rights & Democracy record is poor. A decline in the credibility of the threat, even if to a lesser degree, could also be grounded in an inconsistent application in another country in a comparable situation (Schimmelfennig 2023).

The credibility of the threat is high if both tests measuring it are passed. If all conditions for low credibility are met, it will be considered low. If no highly unique evidence can be found on either side, it will be classified as medium with a tendency based on how the empirical material fares in satisfying the conditions of the straw in the wind tests.

Turning to the credibility of the reward, the most basic condition would be the establishment of a link between a reward and the condition. A clear timeline and the necessity of compliance as a clearly stated condition would show that there is a plan and not just general statements on the side of the EU. This condition is a hoop test due to its high certainty in the case of smaller incentives, such as visa liberalization, for which there are likely to be clear timelines, while it is more likely to serve as a straw in the wind test when it comes to the long-term promise of accession which is to ample to be clearly outlined from the beginning.

Another factor could be strong security-related incentives to admit Moldova. Such incentives can have a positive effect in the case of countries and/or governments that do not have a credible exit option from EU membership. This mechanism would be observable if the EU granted rewards to Moldova in relation to security-related events (Schimmelfennig 2023, pp. 190–191). Such evidence would be highly unique if there were specific references on the EU's side to the fact that geopolitical circumstances were an important factor in the decision. Since this is about the credibility of the reward, it would be irrelevant whether this was preceded by general compliance or not but one-sided reliance on the credibility of the reward has so far not proven to be effective in producing Human Rights & Democracy related improvements facilitating the establishment of so-called “stabilitocracies”(Bieber 2018). The credibility of a reward is also linked to the EU's consistency in rewarding Moldova's improvements. It can also be inferred from whether the EU granted countries in similar situations the rewards it promised them.

In contrast, low credibility of the reward would firstly be indicated if only very general perspectives were given to Moldova. This would be a rather strong but still probabilistic indicator of low credibility since it suggests the lack of a firm basis for consistent rewarding. A highly unique way of proving low credibility would be instances of progress not leading to rewards. This would be particularly robust evidence if this would happen despite clearly outlined reward timelines (Schimmelfennig and Sedelmeier 2020, p. 817).

The credibility of the reward will be considered high if there is consistent progression towards the reward for Moldova, no matter the reason, which would be highly unique proof. If there is a clearly outlined path with a rewarding record that is at least mixed and not clearly inconsistent

it is medium. In this case, it would be closer to low credibility if specifically clearly timed rewards were inconsistently applied. Low credibility of the threat would be given if there was mainly inconsistent application no matter the clarity of the timeline and perspectives. An inconsistent application in the case of other countries does not necessarily make the rewards promised to Moldova low in credibility if there is at least a mixed record with regard to Moldova itself. The credibility of the reward in relation to other countries can indicate a tendency if the evidence explicitly relating to Moldova is ambivalent and the situations are comparable. Other central aspects that will be considered when evaluating the quality of the external incentives are the size and the speed of the promised rewards, with the former being the most important. They will not be dealt with in their own chapter but nevertheless discussed in the context of the cost-benefit analysis chapter and others where appropriate.

Apart from this, the question arises whether the quality of external incentives has had the expected effects on differential empowerment. A basic condition for differential empowerment would be the EU being popular among at least a majority of Moldovans. Differential empowerment of domestic pro-EU politicians would be indicated by pro-EU politicians referring to the necessity of adopting such legislation to fulfill EU demands. This would at least show that it empowered them to adopt the law, but might still happen in a context where it is unpopular and has to be excused by externalizing the responsibility for it to the EU in domestic discussions (Kahlina 2015). If only this condition were met, it would not indicate any level of differential empowerment. The connection between this and the determinacy and credibility of demands could be shown by politicians emphasizing that a condition is necessary to obtain a certain reward or references to benefits that await Moldova in the case of compliance and the negative effects of non-compliance.

The use of the law's link to the EU by LGBTI activists would be a robust probabilistic indicator of differential empowerment. It would prove that these actors have an additional argument to support the policies they desire (Levitsky and Way 2010, p. 49). The differential empowerment of supportive political and societal actors would be strongly pointed to by their positive framing of LGBTI rights improvements in terms of European values that Moldova aspires to be on par with. This would indicate that there is an actual empowerment of the idea of LGBTI rights through the EU's normative authority.

A lack of majority support for the law would not automatically indicate a lack thereof, considering that the sensitivity of the topic might still decrease through its connection to the EU. Overwhelming opposition would nevertheless put differential empowerment of political actors supporting LGBTI rights in question due to the high political costs of supporting a law that enjoys such little support. Majority support would strongly indicate differential empowerment in the meanwhile. If at least balanced support and opposition are given, the positive framing of LGBTI rights in the context of liberal European values would count as unique evidence for the differential empowerment of political actors who are pro-LGBTI.

A lack of differential empowerment of pro-EU actors would be marked by their avoidance of specifically referring to LGBTI rights by using general phrases such as “other similar groups, no one should be discriminated, everyone is equal” etc. which do not acknowledge LGBTI rights. This would be a particularly strong indicator if other groups were specifically mentioned. Observing this would count as certain evidence indicating the absence of differential empowerment by showing that framing possibilities have not or barely been used. Such an avoidance by LGBTI activists would make clear that they are not differentially empowered by showing that they possibly fear discrediting the EU by linking themselves to it (Shevtsova 2020).

The absence, and even inversion, of differential empowerment would be indicated by the negation of the connection between European values and improvements of LGBTI rights or the use of homophobic discourse in order to “make up for” the obligation of passing the law. Evidence of this effect would be highly unique in proving the absence of differential empowerment and even probabilistic evidence for the disempowerment of pro-EU politicians (Shevtsova 2020). This would be the case more strongly if the mentioned factors were accompanied by an extensive use of anti-EU rhetoric focusing on its connection to LGBTI rights from the side of pro-Russian actors. While this would already be highly unique evidence for the disempowerment of pro-EU-actors this effect would be particularly pronounced if a clear majority rejects the law.

Pro-EU actors are differentially empowered if there is evidence of more than isolated instances of positive framing of LGBTI rights in the context of European values. If pro-EU actors address the necessity in terms of the EU’s conditionality but remain reluctant to frame the issue

positively without the other side using it extensively, it can be considered neutral. If they negate the EU's connection to improvements in the sector, accompany cautious support for the law with homophobia and/or if pro-Russian actors use the topic far more, there is inversed differential empowerment. An amplification of this negative effect through weak external incentives would be indicated by discussions on whether a condition is even a necessity for gaining a reward and actors calling into question whether Moldova will ever get access to EU benefits.

The analysis concerning differential empowerment will be carried out through the analysis of parliamentary speeches, the three most popular news websites in Moldova during the two respective periods (Știri.md 2014; Gemius 2024), the X, Facebook and Odnoklassniki accounts of all parliamentary parties and their leaders and an interview with Angelica Frolov (5/29/2024), the Coordinator of the LGBTI Rights Lobbying and Advocacy Program of the Moldovan LGBTI rights organization Genderdoc-M (Genderdoc-M 2024). These sources were screened for words such as “sexual orientation, homosexuality, homosexual, transgender, LGBTI, gay, sexual orientation, gender identity, anti-discrimination law and law with regard to equal chances” in Romanian and Russian. Parts of these words were searched for to detect titles in which they appear grammatically modified. All the articles found in this context were screened for relevant content, and the most fitting examples in terms of the defined observable implications and references to notable absences of certain types of content were included in the empirical analysis.

The results of the analysis will be put in the context of the cost-benefit analyses of all domestic veto players to see whether the EU's external incentives significantly influenced them. The focus is on investigating whether the external incentives worked as expected in the sense that they provided significant motivation for passing the anti-discrimination legislation. If the causal mechanism worked as expected, the incentives should have been more robust in the second period than in the first one, considering the farther-reaching reforms. Whether this is the case can't merely be decided based on one single factor but only through a general appreciation of all relevant aspects. It is nevertheless guided by the idea that accession conditionality, if at least applied moderately efficiently, holds particular power (Vachudova 2005, p. 65).

## **4 Moldova's anti-discrimination legislation in the context of its EU association process**

The first serious steps towards an inclusive anti-discrimination law were made in the period after the 2010 parliamentary elections, which culminated in the election of a pro-European government, following the election of a pro-EU president in 2009, whose stated goal was bringing Moldova closer to the standards of the EU to facilitate further EU integration. It aimed to conclude an Association Agreement, on which negotiations had started in 2010, and obtain a visa-free regime for Moldovan citizens (Danii and Mascauteanu 2011, p. 102).

To meet the EU's demands, the Moldovan government elaborated a draft law in February 2011 that aimed at offering general legal protection from discrimination on the grounds of sexual orientation. This initial draft had to be withdrawn due to widespread disapproval and was subsequently submitted to public consultation for a compromise to be found (European Commission 2012a). The driving force behind the rejection of the initial law was protests from the Church and politicians from the Moldovan Communist and Socialist parties. While the latter party can clearly be defined as pro-Russian, the former is ambiguous while clearly not being classifiable as pro-EU. From 2009 to 2012, the Communist party was considerably larger than the Socialist party (Vladimir Socor 2014). When it comes to the proposed law, the actions taken against it ranged from demonstrations, petitions and threats of barring members of the governing coalition from entering cathedrals to members of the Communist party boycotting the parliament deliberations on the law in May 2012 (Point 2011a, 2011b; The Parliament of the Republic of Moldova 2012).

The law was considerably changed to only offer protection from homophobic discrimination in the workplace (Diaconu 2012). This step was in line with the minimal requirement of the EU acquis (Thiel 2022, p. 9).

### **4.1 Determinacy**

The basic condition of the EU stating the demand was definitely given. This can be concluded by looking at the Visa Liberalisation Action Plan (VLAP), which includes a specific section calling for the adoption of comprehensive anti-discrimination legislation. In this section, the

topic of discrimination based on sexual orientation is addressed and explained as a matter of conformity with EU directives demanding protection in the employment sector (European Commission 2011b).

The demand fares adequately when analyzing the attention that the EU gives to it quantitatively. When analyzing the reports in terms of thematic blocks, the three big ones that stand out are Human Rights & Democracy, Economy and Trade, as well as geopolitical and security-related issues to a lesser degree. The largest part of all country progress reports comprises chapters that do not neatly fit into one of these categories.

While the 2011 European Neighborhood Policy Implementation Report dedicated two pages to human rights and democracy each, it only dedicates half a page to the Transnistrian conflict and did not put regional stability or security issues at the center. In the meantime, the chapters on trade and economy amount to four pages (European Commission 2011a). Similar patterns can be observed with regard to the 2012 and 2013 EU Progress reports on Moldova, with the former dedicating four Pages to Economy and Trade, two to Human Rights & Democracy as well as one to the Transnistrian conflict and the latter three to Economy and Trade, two to Human Rights & Democracy and half a page to the Transnistrian conflict and other CSFP topics. The economy is thus always the most represented or among the most represented, with security considerations never overtaking either. When specifically looking at the mentions of the anti-discrimination law in the context of sexual orientation, it can be contended that it is mentioned in all 3 documents (European Commission 2011a, 2012b, 2013).

A frequency analysis will not be presented with regard to the VLAP reports due to their very standardized format and highly technical nature. The inclusion of a complete section on “External relations and fundamental rights” is already satisfactory, considering the highly specialized thematic focus of the documents. This is accompanied by the constant inclusion of a standardized question on the state of anti-discrimination legislation and the fact that sexual orientation has always been mentioned in this context (European Commission 2011b, 2012a, 2012c).

A strong aspect of the anti-discrimination law’s position is that it was even included in the VLAP. This in itself leads to higher determinacy even though it is not outlined as a priority



within the document because the action plan is determinate in itself since it covers a smaller range of topics. Furthermore, it provides very detailed instructions. Regarding prioritizing language, little can be observed apart from the second 2012 VLAP report strongly linking the attainment of the benchmarks to the antidiscrimination law (European Commission 2012c). Apart from this, only the topic's positioning in the introduction of several progress reports sticks out. It is worth mentioning that little prioritizing language is used in the concerned reports and that it is also not used in connection to security matters.

While all this indicates high determinacy, it is not clearly stated as a *sine qua non* condition. Nevertheless, some signs point in such a direction, considering that the second Progress report on the VLAP specifically uses the standards of the EU acquis against which the new draft law will be assessed (European Commission 2012a, p. 24). While not an absolute statement, this contributes to the general assessment that the determinacy of the demand was high before the law's passing in 2012.

## **4.2 Credibility**

The basis for the threat's credibility is robust since the second progress report on the VLAP mentions that the beginning of the assessment of the second set of benchmarks depends on the fulfillment of the condition (European Commission 2012a). There is thus a strong link between compliance with the fulfillment of the few remaining conditions of the VLAP and the opening of the next chapter, bringing Moldova closer to the desired visa-free regime that could be available soon. This also contributes to the credibility of the reward.

Inconsistency due to a neglect of human rights and democracy due to other priorities is not given, taking into account that Moldova was awarded a higher score than ever before regarding democratic governance and citizens' rights (V-Dem 2024). A factor that nevertheless lessens the credibility of a potential threat is the fact that the previous government, headed by the communist Vladimir Voronin, obtained technical and financial support as well as trade facilitation agreements despite a weak record on human rights and the rule of law (Hagemann 2013). Furthermore, Ukraine was invited to sign an Association Agreement in 2013, notwithstanding its weak Human Rights and Democracy record. This was assumed to be, among other things, linked to geopolitical considerations (Kubicek 2017) and happened despite the lack of an anti-

discrimination law that includes sexual orientation (BBC News 2015). While this also lowers the threat's credibility for Moldova, it is important to be aware that Ukraine is considered a geopolitical pivot, which is not the case for Moldova (Vlad et al. 2010). Moldova's possibilities for leveraging the geopolitical interests of the EU against it are thus more restricted. Furthermore, the situation of Voronin is not entirely applicable to Moldova's pro-EU government because it was elected based on the promise of European integration (Danii and Mascauteanu 2011).

The threat's credibility is medium taking into account that anti-discrimination legislation is explicitly linked to progression within a clear timeframe. The inconsistency in other cases lowers it, but due to the not completely comparable situations, this is insufficient to lower the threat's credibility.

When it comes to the credibility of the reward, it cannot rely heavily on the EU's security interests. While Ukraine was generally considered a geopolitical pivot, Moldova did not hold that much geopolitical significance, and a shift can be perceived when comparing the first with the second period after the Russian invasion of Ukraine, indicating that Moldova's geopolitical significance did not use to be sufficient for securing it rewards as easily (Schimmelfennig 2023).

When it comes to the credibility of the reward, it can be said that Moldova's democratic reforms were followed up by the start of accession and visa liberalization negotiations, which comprised clear timelines (European Commission 2011a, 2012b). Apart from the strengthened level of integration, the support for necessary projects can also be considered a small reward that is part of the association process. More substantive rewards for Moldova's democratic reforms did, however, materialize soon after the law was adopted, with Moldova obtaining a visa-free regime and association within roughly two years (European Council and Council of the European Union 2024). The credibility of the rewards of visa liberalization is consequently high and their delivery speedy.

### 4.3 Differential empowerment

The basic condition of the majority seeing EU integration as a reward is met considering that most, or at least very clear plurality, constantly state that they would vote in favor of EU accession in a referendum (Institutul de Politici Publice 2024). This attractive option was used to justify the passing of the anti-discrimination law because it was based on EU demands. Actors representing the pro-EU coalition made wide use of this in settings such as the parliamentary debates where the law was introduced as a necessity for completing EU directives. It was heavily framed around the visa liberalization process by MP Igor Corman who called it Moldova's probably most well-known legislative proposal on the domestic and international stage in the final parliamentary debate (The Parliament of the Republic of Moldova 2012). The same line of argumentation was also used by Prime Minister Vlad Filat and President Nicolae Timofti, who, when asked about the law, stressed the benefits of European Integration for Moldova as well as the topic of visa liberalization in much detail without taking a stance against homophobic discrimination (Point 2012d, 2012b). The specific urgency of the law is often made clear by mentioning that it would be one of the last two unfulfilled conditions for a visa-free regime, which underlines the power of a credible promise, even if it does not necessarily make the cause itself popular.

While the fact that the EU demanded the law was used to “clear themselves of the responsibility” for its approval by many politicians, there are few instances of it being used to justify its content. Sexual orientation as a protected category was often omitted and mainly discussed in response to pro-Russian politicians emphasizing it. A rare instance of an explicit justification of its content was an interview with Justice Minister Efraim, who mentioned that it should protect all minorities and that the EU wants to ensure that Moldova shares its values (Point 2012a). The language in the interview is not particularly strong, only focusing on homosexuality when mentioning that the law does not promote it or facilitate gay marriage. The condition is, thus, not met because positive framing within the context of EU values remained marginal. Conversely, statements aimed at distancing oneself from the issue were commonplace. This was evident when looking at the law in the end explicitly stating that it did not affect the institution of marriage (The Parliament of the Republic of Moldova 5/29/2012). It could also be observed that many pro-EU politicians accompanied their support with homophobic discourse,

a focus on technical discussions on the association process and/or the overaccentuation of the law's other aspects.

Examples of homophobic discourse are the leader of Moldova's Democratic Party stating that homosexuals "are not people like us"<sup>2</sup> (Pro TV 2012b) and proudly referencing that LGBTI groups staged protests denouncing his homophobia while responding to the homophobic and anti-EU speech of the pro-Russian MP Abramciuc in the parliamentary discussion on the law (The Parliament of the Republic of Moldova 2012, pp. 29–30). Apart from this, mentioning that the passing of the law would not lead to further steps was an integral part of the discourse; particularly, the leaders of the two smaller coalition parties criticized the law openly, formulating conditions for their approval (Pro TV 2012c). A particularly telling instance of this was the Liberal Party conditioning its support on the simultaneous approval of a law mandating the chemical castration of pedophiles (Pro TV 2012a). This condition was set in the context of emerging homophobic Russian propaganda discourses, which unduly established a discursive connection between homosexuality and pedophilia (Reid 2012). The impact that this trend had could soon also be felt in Moldova, where the majority pro-EU Parliament passed a law that could have been interpreted as banning "homosexual propaganda" in 2013 (Garcia 2013). This law was accepted with 57 out of 101 votes and without counter-speech (The Parliament of the Republic of Moldova 2013). Despite the law being brought into conformity with EU human rights standards shortly afterward in the wake of the Vilnius summit, this serves as an example of how strong the desire not to be perceived as standing for LGBTI rights was among pro-EU politicians (Radio Free Europe 2013).

This desire also led to debates on Moldova's negotiations with the EU and the absoluteness of its demands among Moldova's parties, highlighting the importance of determinacy and credibility. Regarding the discursively constructed determinacy of the demands, questions were often raised on whether the government had negotiated adequately, considering that some countries had obtained membership status without passing such anti-discrimination legislation. While this is untrue, it was used by politicians in the governing coalition and societal actors

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<sup>2</sup> This quote was translated by the author. Its original Romanian version is "Homosexualii nu sunt oameni ca si noi" (Pro TV 2012b).

opposed to the law alike to discredit the work of the executive (Point 2011d; The Parliament of the Republic of Moldova 2012, p. 29).

Pro-Russian actors being more empowered by the topic is not just evident in their far more pronounced usage of the issue and its link to the EU but also in public opinion. In this context, opinion polls show that a plurality rejected the law, with 42,7% supporting it and 47,2% being against it. While this difference is not extreme, the law's opponents felt more strongly about it, with the number of those who are totally against it being 9,7% higher than those who are totally for it (Institutul de Politici Publice 2024).

While pro-EU actors downplayed the protection of sexual orientation and talked about other protected categories to cover it up pro-Russian actors such as the Socialist MP Veronica Abramciuc claimed that this was a law mainly aimed at supporting homosexuals and furthering their supposed agenda. This was negatively linked to the EU by Mrs. Abramciuc, who portrayed Moldova's government as a Western puppet that imposes "Western decadence" on Moldova (The Parliament of the Republic of Moldova 2012). Many of the law's opponents from the clergy engaged in similar discourse and connected the "vice" of homosexuality to the EU, often stressing that the promised rewards would not be worth the alleged loss of morality (Point 2012c, 2011c). This was also called into question by the Socialist politician Igor Dodon, who in 2013 stressed supposed advantages of closer cooperation with Russia, stating that they were even available "without laws legalizing sexual minorities"<sup>3</sup> (Dodon 2013). Similar discourse could be heard from the Communist leader Vladimir Voronin who, after claiming that it was his party that started Moldova's early European integration, asked "why European integration should be done through the ass"<sup>4</sup> (The Parliament of the Republic of Moldova 2013, p. 18). Apart from such comments, that could in some way be classified as criticism of how the coalition handled European integration, Voronin also voiced hostile comments towards the EU itself, such as the insinuation that the EU Commissioner for Enlargement and Neighborhood Policy

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<sup>3</sup> This quote was translated by the author. Its original Romanian version is „fara legi de legalizare a minoritatilor sexuale” (Dodon 2013).

<sup>4</sup> This quote was translated by the author with the help of DeepL. Its original Russian version is “почему вы поняли и решили, что европейскую интеграцию надо делать через жопу?” (The Parliament of the Republic of Moldova 2013, p.18).

had “smooched”<sup>5</sup> (Noi.md 2013) with member of the LGBTI community for attending pride in Chişinău while stipulating that the anti-discrimination law would be the first one he would scrap once he gets back to power. This duality of “processual criticism” and open hostility to EU representatives is typical of the communist Party’s ambiguous stance.

Another indicator of a lack of differential empowerment is that even LGBTI activists preferred not to create discursive links between EU integration and their cause in order not to hurt Moldova’s European path. The connection between the two is seen as a trap set by pro-Russian actors, and while there is cooperation between them and the EU delegation, they avoid referring to the EU’s demands. While there is fear of lessening the popularity of the EU, there is also the more hopeful assessment that more widespread rejection of homophobia among the pro-EU section of the electorate could have been, to some degree, facilitated by pro-Russian actors pushing their anti-LGBTI narratives very forcefully (Frolov 5/29/2024). This seems to be the case because some pro-European voters started dissociating from homophobia due to its “pro-Russian” connotation that lies in contrast to their pro-Europeanness (Kuhar and Paternotte 2017, pp. 197–198).

All of this leaves no room for doubt that pro-EU politicians were by no means differentially empowered but rather cornered. Having to defend an unpopular law, they had a difficult time maneuvering the topic, got entangled in contradictions and were attacked by their political opponents. Pro-LGBTI activists were also not empowered by the possibility of framing their demands as European values, but their cause might have at least won some supporters among EU supporters whose identity might contrast with the predominant pro-Russian nature of homophobic discourse even though the magnitude of this is not likely to have been high considering the prevalence of homophobic discourse among pro-EU politicians. In this sense, the ones most empowered by this discourse were pro-Russia actors who were given the possibility of attacking their opponents.

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<sup>5</sup> This quote was translated by the author. Its original Romanian version is “s-a pupat” (Noi.md 2013).

#### **4.4 Cost-benefit analysis**

Generally, it can be said that the external incentives were of medium to high quality. While determinacy and the credibility of the speedy reward were strongly pronounced, the threat's credibility and the reward's size, the most important category, were medium. The external incentives seem to nevertheless have been enough for all coalition members to support the law, considering that the promised rewards were virtually the only argument used to justify its adoption, along with a complete absence of the justification of its content with regard to sexual orientation by politicians.

The low popularity of the reform created incentives to amend it to lower the adoption costs and discursively distance oneself as much as possible, outlining the inverse differential empowerment of norm entrepreneurs opposed to the law which set the discursive agenda. It seems that particularly the two smaller coalition members believed that for this process to result in net-gains for them, they would have to engage in homophobic discourses started by pro-Russian actors and criticize the executive for its handling of the negotiations, making references to the determinacy of the EU's demands.

This shows that not only the actual strength of external incentives matters but also the way they are discursively constructed. While it is true that countries like Ukraine negotiated Association Agreements without passing such a law and that Voronin was able to claim rewards without coherent compliance, the claim that even some EU member states did not comply with anti-discrimination in employment was exaggerated.

## **5 Moldova's anti-discrimination legislation in the context of its EU accession process**

In 2023, Moldova passed an amendment to its anti-discrimination law that included sexual orientation and gender identity as generally protected categories (Știri.md 2023b). The Justice Ministry elaborated the law and also aimed to improve the quality of the services of the Equality Council (Radio Europa Liberă Moldova 2022). It was also elaborated in a context in which the Moldovan President and its government were both pro-European and pursuing the goal of bringing forward Moldova's EU accession process after Moldova was granted candidate status in June 2022 following the Russian war of aggression against Ukraine (Deutsche Welle 2022). In contrast to the previous period, this amendment does not seem to have been as widely discussed and protested against despite there being a virtually uniformly pro-Russian and explicitly anti-EU opposition

### **5.1 Determinacy**

The European Commission's opinion on Moldova's accession bid was the most important document regarding the EU granting Moldova its candidate status. The Commission recommended Moldova's elevation into the status, prompting the Council to swiftly elevate Moldova into this position (European Commission 2023b). This opinion is thus a crucial document to analyze when investigating how clearly the EU voiced its demand for an anti-discrimination law. The document is not indicative of a shift toward geopolitical demands. The topic remains restricted to mentioning Moldova's positive role in supporting Ukraine and its vulnerability. Democracy, human rights and good governance stand out quantitatively, occupying six pages. The other thematic block on economy comprises only two pages, while the rest is dedicated to mixed topics. The determinacy of the document is nevertheless only medium considering that the nine steps, which are the priorities most clearly linked with progress towards accession, only contain one point asking for a better human rights situation and the protection of vulnerable groups broadly. Meanwhile the gender-based violence is specifically mentioned. The document itself only generally says that discrimination on the grounds of gender identity and sexual orientation should be combatted. The only demand specifically linked to the law is strengthening the Equality Council (European Commission 2022).



As was the case in the previous period, the determinacy of the demand for the general inclusion of sexual orientation and gender identity in the law is based on a more specific document, which is the Association Agenda signed in August 2022. This document is generally more determinate as the Commission's Opinion since it has the form of a treaty and clearly stipulates that the obligations arising from it must be fulfilled. The quantitative analysis of its recommendations doesn't show a distribution to the detriment of Human Rights & Democracy issues, with 239 on Economy and sectoral cooperation, 113 recommendations on Good Governance, Human Rights & Democracy, 82 on Freedom, Security and Justice and 19 on Foreign and Security Policy. While the explanatory value of quantitative comparisons is low, it has a very positive effect on the demand's determinacy that the EU clearly included the adoption of the amendments to the anti-discrimination law in this document, considering its generally high determinacy and level of legally binding character. In addition, the demand is also connected to the specific timeframe of the next three to four years (EU - Republic of Moldova Association Council 2022). While the Association Agenda does not primarily deal with the accession process, the Opinion's Commission does use it as a point of reference for Moldova's ability to assume the responsibilities of membership, making it a relevant document even if not as strong of an indicator as the completely accession-focused ones (European Commission 2022).

The first report on Moldova in the context of the EU's enlargement policy, released on the same day on which the opening of accession negotiations as the next step towards membership in November 2023 was decided (European Commission 2024a), does not mention the inclusion of sexual orientation and gender identity in the anti-discrimination law when explaining how Moldova fulfilled the EU's conditions on human rights only praising the strengthening of the Equality Council through the same law. This counts as probabilistic evidence that the EU was not very clear on this being a priority. The determinacy of the EU's demand can, thus, generally be considered medium because there is no clear over-prioritization of other sectors in EU documents and the demand for inclusive anti-discrimination legislation being included, among many others, in a specifically legally binding and determinate document that is also used as an analytical base for documents evaluating Moldova's progress in the accession process while not being mentioned in these more accession-related documents.

## 5.2 Credibility

The credibility of the reward of EU membership has considerably increased in comparison to the early 2010s. While back then, Moldova did not have any membership perspective, it became an accession candidate in 2022 in a process that has so far been dynamic and fruitful (European Commission 2024a).

This increased credibility of the reward is tied to the fact that Moldova is considered to be threatened by Russian expansionism in the context of Russia's invasion of Ukraine. This circumstance is mentioned explicitly in the Commission's Opinion (European Commission 2022). This underpins the hypothesis that high credibility of the reward might be observable due to security interests that give the EU a stake in enlargement (Schimmelfennig 2023). The necessity of Moldova's admission for regional stability and the country's survival seems to have installed a sense of urgency in the EU, making the promise of the reward more credible and speeding up the start of the accession process. Credibility is strengthened by the, so far, speedy obtention of rewards on the path to membership (European Commission 2024a). This is reinforced by clear statements by the Presidents of the European Commission and Council stressing that the EU will help Moldova achieve membership (Von der Leyen 2022) and explicitly linking this to the situation created by Russia's invasion of Ukraine (Michel 2024).

While according to the November 2023 progress report, which paved the way for the opening of accession negotiations, Moldova performed the best with regard to Chapter 31 (Foreign, security and defense policy), one can't automatically infer low credibility of the threat from this. This is the case because efforts were made in many other areas, even if it's normal that holistic reforms can't be fulfilled so quickly. The use of cross-conditionality against EU demands is impossible because the Moldovan President and government are fundamentally elected due to their pro-EU position, with Moldova being in danger precisely because of its European choice (Politico 2021; Reuters 2023). The threat's credibility is further heightened because Georgia, as a country in a similar situation, was not immediately granted the desired EU candidate status due to a lack of reforms (Liboreiro 2022). Consequently, there seems to be some degree of merit-based rewarding even in such challenging times. The credibility of the reward and the threat is thus high.

### **5.3 Differential empowerment**

In 2022, the perception that Moldova would benefit from being an EU member was widespread, with 51,5% of Moldovans considering that Moldova would mainly benefit from EU-membership and only 31.6% expecting it to be rather disadvantageous (Institutul de Politici Publice 2024). This general idea of EU integration as a reward is enforced by a perception that the ultimate reward offered by the EU can be credibly obtained, with a majority of Moldovans believing that Moldova could become an EU member within the next 20 to 25 years and almost 40% believing that this could even happen within 10 years as opposed to 28.7% thinking that it will never happen in November 2022 (Institutul de Politici Publice 2024).

It can be observed that there was a reference to the fact that the amendment of the law stems from Moldova's obligations assumed in the EU Association Action Plan made by the Moldovan Justice Minister when presenting the law. She also mentioned that the law had already been proposed but was ultimately withdrawn (The Parliament of the Republic of Moldova 2022b, p. 44). This reference is nevertheless one of very few statements on the law and does not represent a discourse pattern used by pro-EU actors. Pro-EU actors used general formulations and did not mention sexual orientation or gender identity when discussing and presenting the law and made no references to it on social media, while pro-Russian actors did not engage in discourse on it at all. Most interestingly, the Socialist MP Alexandr Nesterovsch asked for a law on the prohibition of "LGBTI propaganda" in schools to be discussed without ever mentioning the amendments to the anti-discrimination law, which were also being discussed (The Parliament of the Republic of Moldova 2023).

The same puzzling pattern could be observed in the case of other similar laws, such as a law against harassment, which included sexual orientation and gender identity as protected categories. This was not discussed by pro-Russian politicians either, but in this case, the government representative mentioned sexual orientation and gender identity, among other categories (The Parliament of the Republic of Moldova 2022a). The governing pro-EU party even posted about this law listing gender identity as one of the protected categories (Partidul Acțiune și Solidaritate 2022). They did, nevertheless not frame LGBTI rights as part of the EU value system. Despite this lack of discourse on the enhanced anti-discrimination law pro-Russian actors were still considerably more active in talking about LGBTI issues. Their mentions of the topic did

nevertheless not revolve around the mentioned laws but rather on the subject of LGBTI acceptance being discussed in schools, pride parades and the notion that gay marriage could be legalized.

Apart from repeatedly asking for bans on and posting about “LGBTI propaganda” in schools and claiming that young people in Europe and the US could choose their gender among more than 50 to underline their point about its danger (Partidul Socialiștilor din Republica Moldova 2022) the Moldovan Socialist party and its leader Igor Dodon also posted about their opposition to the holding of Pride events in Chișinău accusing the government of promoting homosexuality (Dodon 2022a). The Socialist's homophobic attacks on the government were also discursively connected to the EU like, for example, when their leader stated that EU integration would lead to a detrimental entanglement of Moldova in the EU's geopolitical tensions and an assault on traditional values (Dodon 2022b) while not offering the same advantages as in 2005. In this context, he also questioned the credibility of the threat and the reward, stating that Moldova, along with Ukraine, was given candidate status despite a lack of reforms in the wake of Russia's invasion of Ukraine. He also tried sowing doubt on the credibility of the EU's promise by stating that Moldova would never join the EU (Moldova News 2022), saying that membership is a carrot the governing party uses to keep the population patient. This was also accompanied by a reference to the notion that these untrustworthy incentives were accompanied by the EU forcing its values on Moldova, for which pride parades were used as an example.

Similar discourse could be observed by the pro-Russian Șor Party and its leader Ilan Șor, who also accused the government and the Presidency of facilitating Pride parades (Șor 2022) and spreading “LGBTI propaganda” in schools (Partidul Șor 2024). This was recently also incorporated into the party's anti-EU campaign through claims that the government would plan to legalize gay marriage in the future following the supremacy of EU law (Șor 2024). While it is unclear why these topics were chosen instead of the anti-discrimination law, considering that gay-marriage is not an EU condition, it might be due to their expected shock value. This could be assumed taking into account that gay marriage was only accepted by 5% of Moldovans in 2017 (Pew Research Center 2017), which is significantly lower than the support that the anti-discrimination law received.

This time, the pro-EU government did not deal with this by adopting homophobic discourses but still sought distance from issues such as gay marriage. This distance was, for example, kept with the help of a Facebook video debunking the notion that Moldova would have to accept gay marriages in case it further wanted to integrate into the EU (Partidul Acțiune și Solidaritate 2024). It is worth mentioning that up to six government MPs, including Vice Prime Minister Dumitru Alaiba, attended Chișinău Pride in 2023, showing some level of open support (Unimedia 2022).

LGBTI activists continuously follow the strategy of not linking LGBTI rights and EU integration in their discourses in order not to hurt the popularity of EU accession. A difference that LGBTI activists feel in comparison to the early 2010s is that the degree to which some in the pro-EU electorate have become less homophobic has increased. This is happening in the wake of Russia's invasion of Ukraine, which has further strengthened the rejection of that which is perceived as pro-Russian since it is now also linked to the brutal war of aggression against Ukraine (Frolov 5/29/2024). This has also been observed to have had a positive effect on the perception of LGBTI rights in Ukraine in the wake of Russia's invasion (Chisholm 2023). Moldova's proximity to the conflict and the danger Russia poses to Moldova could amplify this effect (Frolov 5/29/2024).

This hypothesis is supported by a plurality of Moldovans having a negative view of Russia's actions in Ukraine, with 38,3% seeing it as an unprovoked act of aggression and 32,2% following the Kremlin's narratives in November 2022 (Institutul de Politici Publice 2024). It is also used by pro-European politicians to counter pro-Russian narratives, as evident in Moldova's Deputy Prime Minister Dumitru Alaiba countering that he hopes pro-Russian politicians raise their children with the value that "it's not good to stay silent and pretend not to see that children and innocent people, including the elderly and women, die every day in another country"<sup>6</sup> (The Parliament of the Republic of Moldova 2022c, p. 11), without explicitly mentioning LGBTI rights, in a discussion that pro-Russian politicians started about "LGBTI propaganda" in

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<sup>6</sup> This quote was translated by the author. Its original Romanian version is "că nu-i bine să taci și să te faci că nu vezi, atunci când copii și oameni nevinovați, inclusiv bătrâni, femei, mor zi de zi în țară străină" (The Parliament of the Republic of Moldova 2022c, p. 11).

schools and traditional values. Mr. Alaiba (2022) also posted his speech on Facebook, showing certain confidence that the public would receive his words well.

An increasing focus on security issues to the detriment of human rights is not something activists observe compared to the pre-war period. While they acknowledge that in the first months after the war, the EU's focus, and also theirs, was on helping refugees and their safety in case of a possible Russian invasion of Moldova, they say things have normalized now (Frolov 5/29/2024).

Pro-EU politicians still can't be considered differentially empowered because their main strategy was generally to keep quiet on the issue in public discourse. There is nevertheless a balance between their rare expressions of distance to ideas like gay marriage and statements of support for non-discrimination that explicitly include LGBTI people. The aggressively homophobic discourse from the previous period is absent among them, and there are even individual explicit supporters. The demands of LGBTI activists are increasingly differentially empowered, considering that they profit from being seen as antithetical to pro-Russian politics. This is in spite of the fact that they still don't frame LGBTI rights in the context of EU integration not to hurt the EU's popularity. Nevertheless, pro-Russian politicians still have the easiest time maneuvering the topic in a society that mainly rejects LGBTI rights, which is evident in their significantly higher use of it and their frequent position as an agenda-setter. They do not have anything to lose since even the positive effects of their discourse on the popularity of LGBTI rights mainly affect the already pro-EU section of the electorate.

#### **5.4 Cost-benefit analysis**

The external incentives are of high quality. While their determinacy is medium, the credibility of the threat and the reward are high, with the latter being significantly bigger than in the last period, due to the particular impact of accession conditionality. Furthermore, rewards have been granted speedily even if membership remains a long-term goal (European Commission 2024a). The medium determinacy provides sufficient clarity on the behavioral implications and the obligatory nature of compliance for the external incentives to be classified as strong. These incentives were strong enough to make the law's adoption less costly than non-compliance considering the desire to join and a certain belief in the EU's promises in the electorate. This is particularly the case because the domestic costs seem to have been low, with no instances of

members of the governing party distancing themselves from the law and pro-Russian actors not discussing it.

While pro-Russian actors still benefit the most from the discussion of LGBTI rights, they made use of other aspects of the topic they might assume to be less agreeable. The general idea of the government being LGBTI friendly, to which passing such laws might contribute diffusely, does thus seem costly, but the direct costs inferred by this law seem to have been small. The only issues that pro-EU politicians seem to feel threatened by to the point of distancing themselves were, in this context, inventions about the EU demanding steps such as the legalization of gay marriage. With only one party in government, there are also fewer veto players who need to receive net-gains.

## 6 Conclusion and discussion

The preceding analysis has shown that the external incentives set by the EU were central to the adoption of increasingly LGBTI-inclusive anti-discrimination laws in both periods. As hypothesized, the external incentives were more substantial in 2023 than in 2012, leading to more wide-reaching compliance. Differential empowerment played out as expected since it was higher around 2023 than in 2012 but only really empowered the idea of the law itself by linking it to broadly desired EU rewards in domestic discourse, making it possible to externalize the “blame” for its adoption. Conversely, the political actors proposing it were rather disempowered, having to pass contentious legislation and not being able to frame its content positively by evoking the idea of European values due to fears of EU integration or them losing popularity if they do so. While they could only refer to it as a necessary demand, their opponents could make political use of the topic and try to discredit the government in public perception based on the content of its policies.

This disempowerment of pro-EU politicians was less pronounced in the second than in the first phase. In this context, unpopular aspects of the broad topic of LGBTI rights were used to attack the government around 2022, while in the years around 2012, the law itself and the broad topic were both used in the opposition’s discourses. The way LGBTI rights were broadly used is indicative of a general tendency of domestic discourse to stray away from factual discussions. This is the case for discussions on the EU demanding the legalization of gay marriages, which were not based on facts but dominant in pro-Russian narratives and also significant in the first period, showcasing the impact of disinformation. The more substantial predominance of diffuse criticism, often meant to discredit the EU as a whole, instead of law-specific criticism in the second phase, could be due to the Socialist and Șor parties being more openly against the EU than the geopolitically ambiguous Communist Party, which was the biggest not clearly pro-EU party in 2012.

In a context in which many pro-EU politicians were explicitly hostile to passing inclusive anti-discrimination legislation and only did so out of obligation, discussions were mainly focused on whether this is necessary for the obtention of EU rewards in the first period. Discussions revolved around whether Moldova could negotiate “better” terms that would include fewer LGBTI rights and included examples of where this had supposedly worked. While highlighting



the importance of the determinacy and credibility of external incentives, it showed that non-factual information plays a role in shaping domestic discourses and differential empowerment. The EU's actions are consequently important but it is not certain that they will be factually used domestically.

Another major difference between the first and the second period is the increasingly positive effect of Russian anti-LGBTI narratives on the increasing rejection of homophobia among the pro-EU electorate. While this might have already existed in 2012, despite pro-EU politicians also engaging in homophobic discourses back then, it has become a particularly important factor in the wake of Russia's invasion of Ukraine. This event is likely to have further discredited Russia and its policies in the eyes of the pro-EU electorate, making the assumption reasonable that many come to question possibly held homophobic and transphobic views as they become increasingly incongruent with their identification as pro-EU and opposed to Russian aggression. Russia's invasion of Ukraine does not only create a clear difference between the first and the second period due to its impact on differential empowerment but also by elevating the size of the reward and its credibility to a very high level by giving the EU a sense of urgency and a perceived security stake in admitting Moldova acting as a factor that facilitated the process of passing such a law in several ways.

Further research should analyze how the dynamics of differential empowerment based on external incentives play out in countries whose populations have more uniformly pro-EU but similarly homophobic views, such as Georgia. This would be an added value since the dynamics could be different in a context in which over 80% of the electorate support accession, possibly leaving less room for open criticism of the EU. This could build on existing research on the discursive tactics of the Georgian Orthodox Church (Shevtsova 2023). It would also be empirically relevant considering that the current Georgian government is planning to pass a law prohibiting "LGBTI propaganda" in spite of the country recently having become an EU accession candidate and its government claiming to support Georgia's European path (Katamadze 2024).

## Appendix

List of questions for the interview with Angelica Frolov conducted on the 29<sup>th</sup> of May 2024

Original version (Romanian):

- 1: Care a fost și este impactul posibilității de a stabili o legătură discursivă între drepturile LGBTIQ+ și integrarea europeană pentru cât de complicată sau facilă este abordarea tematicii drepturilor LGBTIQ+ pentru voi și politicienii care le susțin în Republica Moldova fără frică de reacții negative?
- 2: Cum au evoluat asocierile discursive cele mai comune cu comunitatea LGBTIQ+ (la nivel politic și social) în contextul legării discursive ale acestora cu integrarea europeană sau noțiunea valorilor europene în discursul domestic?
- 3: Care a fost și este efectul condițiilor puse de UE privind tematica drepturilor LGBTIQ+ pe politizarea acestora?
- 4: Dacă ați observat o politizare crescută (cu referire la întrebarea 3): Care a fost impactul acestei politizări ale drepturilor comunității LGBTIQ+ cu privire la statutul social al comunității și opinia publică?
- 5: Care partide politice obișnuiesc să profite cel mai mult de prezența discuțiilor privind drepturile LGBTIQ+ în general și legătura lor cu UE în particular?
- 6: Care este impactul strategic al vizibilității tematicii drepturilor LGBTIQ+ pentru legitimitatea percepută a integrării europene în Republica Moldova?
- 7: Cum a evoluat felul în care guvernul ia perspectiva voastră în calcul comparând procesul de asociere și cel de aderare?
- 8: Dacă importanța perspectivei voastre a crescut în procesul de aderare (cu referire la întrebarea 7): Din care motive este cazul?
- 9: Care a fost impactul invaziei rusești în Ucraina pe prioritatea care UE le acorda drepturilor LGBTIQ+ în procesul de integrare ai Republicii Moldova?

English translation:

- 1: What is/was the impact that the possibility of establishing a discursive link between LGBTIQ+ rights and European integration has had on how difficult it is to openly address LGBTIQ+ rights without fear of negative reactions for civil society actors and supportive politicians?
- 2: How have the most frequent associations made with LGBTIQ+ people evolved (politically and socially) in the context of their discursive association with EU conditionality or European values in the domestic debate?
- 3: What is/was the impact of the EU's LGBTIQ+-related demands on the politicization of the issue?
- 4: In case you observed an increased politicization (with regard to question number 3): What was the impact of the politicization of LGBTIQ+ rights on the social status of the community and public opinion?
- 5: Which parties usually profit the most from discussions on LGBTIQ+ rights in general and their connection to the EU specifically?
- 6: What is the strategic impact of the visibility of the topic of LGBTIQ+ for the perceived legitimacy of European integration in Moldova?
- 7: How has the way the government considers your perspective changed comparing Moldova's association and accession processes?
- 8: If the importance of your perspective has increased (with regard to question number 8): Why do you think this is?
- 9: What was the impact of Russia's invasion of Ukraine on the degree to which the EU treats LGBTIQ+ rights as a priority in Moldova's EU-integration process

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