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# **How did the EU conditionality mechanism change for the protection of Roma minorities in 2004, 2007 and 2013 enlargements?**

by

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## **Abstract**

Enlargement is usually accepted as the most efficient foreign policy of the EU. By the mechanism of conditionality, the EU has a significant amount of power over the candidate states. However, the crucial point about the EU conditionality is its flexible nature. Although certain criteria have to be met by the candidate states, there is not a single receipt for all candidates; the content of the conditionalities depends on various factors. This suggestion is especially valid for minority rights conditionalities since there is no common minority protection policy in the EU. Although “respect for and protection of minorities” is a part of the Copenhagen Criteria, there is no objective measurement to assess the compliance of the candidate states to this criterion. The main question of this article, thought, how did the EU use the mechanism of conditionality for Roma minorities during the enlargement processes of 2004, 2007 and 2013, since Roma is the most victimized and discriminated minority group in Europe according to various reports. The main argument of this essay is the problems of 2004 enlargement led the EU to modify conditionalities mechanism for the 2007 and 2013 enlargements however; “respect for and protection of Roma minority” within these countries were still inadequate before their accession.

## **Introduction**

The European Union and its weaknesses in foreign and security policy have long been discussed. However, enlargement can be accepted as the most efficient foreign policy of the EU. By the mechanism of conditionality, the EU has a significant amount of power over the candidate states. If candidate states want to be member states, they have to meet the conditions put by the EU. Unless they meet these conditions, they are not allowed to proceed in further steps. The progress of the candidate states has been monitored by the European Commission by annual reports. Since the EU used this power to promote human rights, rule of law, minority rights, and democracy like stated in the Copenhagen Criteria (European Council Conclusions, 1993); its normative character has been discussed often (Manners 2002). Galbreath & McEvoy (2012) discussed the role of international organizations in minority rights promotion and argued that the EU has the greatest potential for desecuritization of minority issues because of the enlargement and conditionality mechanisms.

However, the crucial point about the EU conditionality is that “it is not a uniformly hard rule-based instrument, but rather is highly differentiated, its nature shifting and transforming depending on the context of the acquis, the

policy area, the country concerned, and the political context in which it is applied” (Hughes, Sasse and Gordon 2004). Thus, although certain criteria have to be met by the candidate states, there is not a single receipt for all candidates; the content of the conditionalities depends on various factors. This suggestion is especially valid for minority rights conditionalities since there is no common minority protection policy in the EU. Although “respect for and protection of minorities” is a part of the Copenhagen Criteria, there is no objective measurement to assess the compliance of the candidate states to this criterion. It is mostly a political decision to declare the compliance. The latest 2004, 2007, and 2013 enlargements of the EU are considered, it can be seen that minority issues occupied an important place during the candidacy period. However, all of the candidates were accepted as the members, therefore confirming their fitness to “respect for and protection of minorities”. Unfortunately, minority problems still continue to exist in these countries.

According to “Minorities as Victims of Crime” report of Fundamental Rights Agency, Roma is the most victimized minority group in Europe and for the category of racially motivated violence, Roma in Czech Republic, Poland, Hungary, and Slovakia are among the top ten states. Various reports from international NGOs like European Network for Antiracism, Human Rights Watch, or European Roma Rights Center confirms the prevalence of violence and discrimination against Roma in these countries.

It is clear that the conditionality and monitoring mechanisms during the candidacy period for these states could not be sufficient for the effective realization of respect for and protection of minorities. After the 2004 enlargement, the EU had experienced two other enlargement rounds and accepted Bulgaria, Romania, and Croatia as members. All of these countries also have significant Roma minorities.

The main question of this article, thought, how did the EU use the mechanism of conditionality for Roma minorities during the enlargement process in these enlargement periods? Czech Republic is chosen as the case study to represent the 2004 enlargement for investigating the conditionality mechanism since it is highlighted by various reports as the most problematic case. Romania is chosen for the 2007 enlargement, and Croatia is for the 2013 enlargement. The main argument of this essay is the problems of 2004 enlargement led the EU to modify conditionalities mechanism for the 2013 enlargement however, they did not reflect effectively to the minority rights conditionalities and they were still inadequate for providing the “respect for and protection of Roma minority” within these states before their accession, although the compliance of them were declared and they were accepted as members.

Within the scope of this article, literature on EU conditionalities regime with a focus on minority rights conditionalities regime and Roma related legislation will be reviewed first. Secondly, the Roma issues in Czech Republic, Romania, and Croatia will be framed and problems during the candidacy period and further developments will be investigated by the help of annual progress reports and ERRC reports. At the end, a comparison will be made between cases in order to observe any modifications in the EU conditionalities regime, and the role and

effectiveness of the EU approach for Roma minority protection will be discussed under the light of the findings.

### **The European Union and Conditionalities**

Economic and political conditionalities are used by states or international organizations to reach their goals. Smith (1997, 4) defines political conditionality as “linking of a perceived benefit of a state such as aid, trade concessions, cooperation agreements, political contacts or international organization membership; by another state or international organization to the fulfillment of conditions related to the protection of human rights, and the advancement of democratic principles”. Although, the use of conditionalities are not limited with the EU, the importance of the EU is stemming from its success in the use of political conditionalities especially in its relations with candidate states to transform them by using *ex ante* conditionalities (Fierro 2003, 98) in accession process, thus forcing them to fulfill the conditions before being members.

There are three types of reinforcement strategies for implementing political conditionalities. Under the strategy of “reinforcement by reward”; when the target government fail to fulfill the conditions, the conditionality actor withholds the reward; but not act coercively by inflicting extra costs (reinforcement by punishment), or offer unconditional support (reinforcement by support) (Zalewski, 5). The EU prefers to use reinforcement by reward strategy by offering trade concessions, aid, cooperation agreements, and political contacts in various degrees in its aid, free trade, association, neighbourhood, and accession relations.

The most successful results have been obtained in its accession relations especially with the Central and Eastern European Countries (CEECs) enlargement. Although, the EU was deeply concerned about the democracy in its relations with Greece, Portugal and Spain during the 1970s and 1980s; the expansion of political conditionalities coincides with the end of the Cold War. After the end of the Cold War, the EU developed economic and political conditionalities for CEECs to carry out the reforms for the full membership due to the variety and number of applicant countries and growing complexity of the EU law.<sup>1</sup>

According to European Council in Copenhagen in 1993, the candidate countries must ensure “stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; a functioning market economy and the capacity to cope with competition and market forces in the EU; the ability to take on and implement effectively the obligations of membership, including adherence to the aims of political, economic and monetary union.”<sup>2</sup> Also, the EU has to have the capacity to absorb new members.

In legal terms, Amsterdam Treaty of 1997 provides a legal basis for the political conditionalities. Article 6 (1) states that the EU is ‘founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law which are common to the member states’; while Article 49 only

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<sup>1</sup> There were conditionalities for the 1995 enlargement of Austria, Finland and Sweden too but they were mostly about technical issues, not political.

<sup>2</sup> [http://europa.eu/rapid/press-release\\_DOC-93-3\\_en.htm?locale=en](http://europa.eu/rapid/press-release_DOC-93-3_en.htm?locale=en)

allows “European states that respect these principles to apply to become a member state.”<sup>3</sup> Furthermore, Charter of Fundamental Rights was made primary law with the Lisbon Treaty of 2007 and the EU was required to join the European Convention of Human Rights.

While the Copenhagen Criteria consist of over-generalized economic, political and administrative conditions; it does not provide a single road map. Grabbe (2002, 250) argues “Do new member states need a German economy, British civil service, Swedish welfare state, and French electoral system? Or how about a Greek economy, Belgian civil service, Austrian industrial relations, and Italian electoral system? The European Union does not present a uniform model of democracy or capitalism, and neither has it tried to define one.”

Considering this disharmony in the EU itself, and the variety of candidates, their different infrastructures, dynamics, resources; the issue gets more complicated. It is the task of European Commission to solve this problem. It is the major institution for the conduct of accession process in the EU executive system. Its task is to assess, lead, assist, monitor the candidates and make sure that they fulfill the criteria. The evaluation of the Commission, especially in the annual progress reports, plays a central role for the declaration of compliance and for the decisions of European Council, since important decisions about enlargement are left to European Council.

This structure signifies the asymmetrical nature of the negotiations. By being both a player and the referee, the Commission (so, the EU) holds a significant bargaining power over the candidates (Grabbe 2002, 251), thus making the process even more vertical and top-down. Furthermore, the lack of a single road map and differences in the candidate countries lead to high degree of flexibility in the conditionality mechanism and increase the inconsistencies in Commission suggestions (Grabbe 2002, 263). Also, Commission usually has to ensure the institutional balance between European Parliament, and the Council of Ministers (Pridham 2007, 455).

The efforts of the Commission do not always conclude with success. The compliance by the candidates determined by the several factors such as “a) credible membership perspective by the EU b) consistency in the EU c) low domestic compliance costs for the candidate government” (Schimmelfennig 2008, 921). However, the compliance of the candidate is dependent on the decision of the Commission, which is mostly based on the transposition of the relevant legislation. The implementation of the legislation is mostly ignored.

It is also considered as a fact that the EU conditionality mechanism is getting stricter for each accession rounds. Pridham (2007, 454) argues after the CEECs enlargement that since “a) candidates are more difficult countries, b) the lessons drawn from previous enlargements, c) a new European Commission and Enlargement Commissioner, d) crisis in the EU over constitutional reform and ‘enlargement fatigue’” would lead to stricter conditionalities for the future candidates. In fact, new mechanisms like benchmarks, and safeguard measures were introduced during the later negotiations, and the Commission became less reluctant about suspending negotiations (Pridham 2007).

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3 <http://www.eurotreaties.com/amsterdamtreaty.pdf>

As a result, political conditionalities already known as flexible and fluid in content; became more strict, and broad in implementation, and the membership prospects are less clear for the candidates (Pridham 2007, 468). In such an environment, it is important to observe the direction of minority rights conditionalities especially because the EU itself does not have a common minority rights policy. It is even suggested that its competence about minority rights are disputable that the Commissions forms a minority rights conditionalities regime in the pre-accession period only by a wide reading of treaties (Kochenov 2008, 3). The EU legislation on the minority rights basically consists of anti-discrimination clauses such as Article 2 and Article 3 of Lisbon Treaty, Charter of Fundamental Rights or Race Directive of the Council (2000/43). The competences of the EU are very limited and do not include the issues as the recognition of the minority status, or self-determination and autonomy demands.

During the pre-accession period the Commission mainly makes its evaluation on the adoption of the various texts of the Council of Europe by the candidate states such as Framework Convention for the Protection of National Minorities, European Convention for Protection of Human Rights and Fundamental Freedoms, the European Convention on Nationality, and European Social Charter. The Commission also takes UNHCR and OSCE High Commissioner reports into the consideration, if they are involved.

For the Roma population, the EU has specific legislation in addition to the above mention ones. On April 2011, Commission adopted a “Communication on a EU Framework for National Roma Integration Strategies by 2020”.<sup>4</sup> In response, member states prepared national strategies for Roma integration and Commission annually monitors and evaluates the progress made by the member states. While these strategies often found weak and insufficient<sup>5</sup>; Council recently adopted the first legal instrument for Roma inclusion on December 9, which highlights the Commission recommendations for Roma inclusion on four basic areas of education, employment, healthcare and housing.<sup>6</sup>

All of these factors such as difficulties faced during CEECs enlargement, realization of the inadequacies of the conditionalities regime on minorities after the accession, the nature of the conditionalities in itself; raises the question of their continuity and change for the further enlargements. In the next part, conditionalities about Roma will be investigated for chosen cases.

## **2004 Enlargement**

After the collapse of the Soviet Union, eight of the former communist states of Central and Eastern Europe have joined to the European Union in 2004. Out of these eight CEECs, Czech Republic has chosen as the case study for this article for the 2004 enlargement round.

The Czech Republic and Slovakia became two independent states in January 1993 when Czechoslovakia split into parts. The Czech Republic finalized the Association Agreement (Europe Agreement) with the EU within the same year

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<sup>4</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0173:FIN:EN:PDF>

<sup>5</sup> <http://euobserver.com/social/116355>

<sup>6</sup> [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/lisa/139979.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lisa/139979.pdf)

and the Agreement started to take effect in February 1995. The Czech Republic applied for the EU membership in January 1996, and the European Commission stated its positive Opinion in July 1997. Following the positive opinion of the EC, the Council of Europe confirmed the opening of accession negotiations on 30 March 1998, at Luxembourg Summit Conference in December 1997. Accession negotiations were started on 31 March 1998, concluded on 13 December 2002, and the Czech Republic joined to the EU on 1 May 2004.

Although the statistical data on Roma population in the Czech Republic is limited, different estimations state that Roma population in the Czech Republic is between 150.000 and 300.000 of 10.500.000 general population (1.4 to 2.8 percent of the population) (ERRC Country Report, 7). The European Commission prepared annual progress reports for the Czech Republic between 1998 and 2003. Roma problems have been mainly dealt under the minority rights section of political criteria. Since the first progress reports, the basic problems underlined by the Commission as racially motivated attacks; widespread discrimination; social exclusion in healthcare, education, housing, and employment; inadequate protection from the police and the courts; segregation in schools and housing; problems in the citizenship law.

During the candidacy period, the Czech Republic adopted necessary anti-discrimination legislation, modified the citizenship law, established equality bodies, and formed long-term policy with adequate financial measures by the pressure from the EU. In the progress report of 2002, it is stated that:

“The Czech Republic continues to respect human rights and freedoms. Some additional activities have been undertaken to improve the difficult situation facing the Roma community. However, more structural measures are needed in order to achieve significant results in remedying discrimination in access to education, housing and employment. The adoption of comprehensive anti-discrimination legislation would be an important step forward in this regard.” (Progress Report 2002, 133).

While the compliance with the minority rights, thus political criteria of the Copenhagen Criteria was declared long time ago, it was also stated that discrimination in education, housing, and employment was still going on and the Roma community was facing difficulties. Furthermore, the deadline for adopting Race Equality Directive (Directive 2000/43/EC) and Employment Equality Directive (Directive 2000/78/EC) was 1 May 2004, precisely the accession date since the candidates have to adopt all of the EU acquis before membership. However, the Czech Republic did not adopt them before membership, and failed to adopt them afterwards too. As a result the EC initiated infringement procedures for the Czech Republic in June 2007, which were concluded when the Czech Republic adopted the directives in 2010, six years after the accession.

Recognizing these realities did not prevent the EU to accept the Czech Republic as a member. Instead, the EC evaluated the intent of the Czech Republic by their efforts on National Roma Strategy, and providing adequate financial and human resources; and did not block the membership road.

## **2007 Enlargement**

Bulgaria and Romania could not catch up with the first group of CEECs for the 2004 enlargement, thus left to the second round. Romania was chosen as the case study for the 2007 enlargement round.

Romania signed the Europe Agreement with the EU in January 1993, and it came into force in January 1995. In June 1995, Romania applied for the EU membership, the EC gave its opinion in July 1997, and the accession negotiations were decided to open in December 1999 Helsinki European Council. Accession negotiations were started in February 2000, concluded in December 2004, and Romania joined the EU on 1 January 2007.

Among the 21.3 million population, around 620.000 is assumed to be Roma (3.3 percent) in Romania. The European Commission prepared progress reports for Romania between 1998 and 2005. The problems related with Roma were stated as widespread discrimination; inhumane and degrading actions of the police; police brutality; exclusion in housing, education, and employment; racial harassment; prejudice; social inequalities; and living conditions. The EU pushed for the adoption of the related legislation, forming the institutional framework with adequate financial and human resources during the candidacy. In the Progress Report of 2005, it was stated that:

“Romania, as in previous years, continues to fulfil the political criteria for membership. Overall, it has reached a satisfactory level of compliance with EU requirements. In the area of human rights and the protection of minorities further efforts are needed to combat ill-treatment in custody, strengthen the administrative capacity of the national office for preventing trafficking in human beings, continue efforts to improve the situation of disabled and mentally ill people, raise awareness on new legislation on children's rights, and ensure the effective integration of the Roma minority in particular as regards access to housing, social services and the labour market.” (Progress Report 2005, 19-20).

Like the situation in the Czech Republic, while the EC recognized the problems related with the Roma minority, declared the compliance and Romania was accepted as member nonetheless. Similarly, the EC took into account the National Strategy as a good effort and intent.

### **2013 Enlargement**

2013 enlargement round is only consisted of the Croatian membership. After the international recognition of the Republic of Croatia in January 1992, relations with the EU intensified. In October 2001, Stabilization and Association Agreement was signed, and came into effect in February 2005. Croatia applied for the membership in February 2003, accession negotiations opened in October 2005, and concluded in June 2011. Croatia became an EU member in July 2013.

Among the 4.2 million population of Croatia, the Roma community is assumed to constitute 30.000 – 40.000 of it (0.4 percent). The EC prepared Progress Reports for Croatia between 2005 and 2012. The general problems were stated as residency and citizenship problems; low levels of literacy; discrimination in education, employment, housing, healthcare, social protection; and segregation in schools. During the candidacy process necessary legislation was adopted,

institutions with adequate financial resources were established. In the 2011 Progress Report, it was stated that:

“As for the Roma minority, there have been some further improvements in education, particularly in pre-school education. Improvements to the infrastructure of some Roma settlements have continued. However, the Roma still face discrimination, particularly regarding access to education, social protection, health, employment and adequate housing. Segregation persists in some schools. Progress towards ensuring that Roma children complete primary and secondary education has been modest. Extremely high unemployment persists, despite measures such as adult vocational training for young Roma women. There is scope for improved take-up by the Roma of measures in their favour. For many Roma there is the persistent problem of their unresolved status (residence and citizenship), which creates difficulties when it comes to the provision of services, notably access to education, health care and free legal aid.” (Progress Report 2011, 12 -13).

Like the situation in the Czech Republic and Romania, while the EC recognized the problems related with the Roma minority, declared the compliance and Croatia was accepted as member. Similarly, the long-term strategy and efforts of the Croatia was seen as adequate.

### **Conclusion**

Although “respect for and the protection of the minorities” is the vital part of the EU accession as a part of the Copenhagen Criteria for membership, EU conditionalities for minority protection is far from sufficient. First of all, the EU does not have clear competence about the issue, so it is hard for it to form a clear policy. It can only force candidate countries to adopt relevant international legislation; form institutional structure; and develop a long-term policy. Secondly, although recognizing the problems of Roma community, the situation of Roma does not seem to effect the membership decision of the EU. It mostly focuses on the long-term policies and commitment of the states. Thirdly, while conditionalities regime seems to change for different enlargement rounds, it does not have a direct effect on the conditionalities on Roma minority.

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