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## The End of EU Conditionality: What next for the EU enlargement process?

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### Abstract

The principle of EU conditionality, as a tool for the EU to ensure that aspiring member states reform their policy to reflect EU norms, has become cemented within the EU enlargement process; the 2004 and 2007 enlargements stand as testament to conditionality's potential. Drawing upon the works of Schimmelfenning and Sedelmeier, this paper analyses the recent decline of the effectiveness of EU conditionality and the need for the EU to move away from traditional processes in the EU enlargement process, an area that has yet to be widely addressed. This is achieved by exploring the other mechanisms available to the EU to ensure compliance with the full *Acquis Communautaire*. Through analysis of Bosnia and Herzegovina's journey towards EU membership, this paper examines the changing relationship between the EU and aspiring Member States and the impact of this change upon the effectiveness of EU conditionality. The case study of Bosnia and Herzegovina demonstrates the requirement for the EU to amend its enlargement procedures to maintain its democratizing effect. I contend that a system which reflects the shift in EU enlargement to include countries of a less traditional European background is needed to improve EU leverage in the pre-accession process.

### Introduction

The ability of the European Union to influence aspiring member states to make the necessary reforms to create domestic policy and institutions that are both stable and strong enough for membership is essential to successful enlargement. The key tool at the disposal of the EU to encourage and ensure compliance with the full *Acquis Communautaire* is EU conditionality. This paper compares the effectiveness of EU conditionality during the Central and Eastern European Countries (CEECS) enlargement through the Accession Partnerships, with the case study of Latvia's minority rights reforms, to the EU conditionality used in the Western Balkan states journey to Europe, with the case study of police reforms in Bosnia and Herzegovina. The External Incentives Model will serve as a signpost for effective EU conditionality, with each case study examined for its fulfilment of the conditions for this model, along with the practical impact of EU conditionality to date. The paper will propose that the effectiveness of EU conditionality as a tool to engage with policy reform in aspiring states has dramatically reduced following the 2004 and 2007 rounds of enlargements. The conditions in remaining aspiring states predominantly in the Western Balkans are not conducive to successful EU conditionality. This paper will analyze how future EU engagement with these states needs to adapt to ensure that the EU still has a voice to inspire reform in the region.

The enlargement of the EU has allowed for external governance on an unprecedented scale through EU conditionality. The “desire of most to join the EU combined with the high volume and intrusiveness of the rules attached to membership”<sup>1</sup>, provided the EU with the ability to influence the CEECs on issues from public policy to the structuring of domestic institutions. Schimmelfenning and Sedelmeier highlighted the development of democratic conditionality and *Acquis* conditionality. Democratic conditionality refers to the transfer of the fundamental principles of the EU, in particular norms on human rights and liberal democracy into domestic policy. On the other hand, *Acquis* conditionality refers to the transfer of the rules found in the *Acquis Communautaire* into the domestic policy<sup>2</sup>. The distinction between the two forms of conditionality is not important for the purpose of this study. Three models exist that attempt to explain the principle of EU conditionality as a tool to encourage reform in accession states.

#### Models of EU conditionality

The favored model of EU conditionality is the External Incentives Model, or the 'carrot and stick' approach to conditionality<sup>3</sup>. Based upon the Rationalist Bargaining model, the External Incentives Model proposes that the EU sets conditions which aspiring members must fulfill in order to receive the reward of EU membership<sup>4</sup>. According to Schimmelfenning and Sedelmeier, the strength of this model is determined by the fulfillment of several conditions; adoption costs, determinacy of the conditions, the size and speed of rewards and the credibility of threats and promises<sup>5</sup>.

According to the External Incentives model, the costs which occur on the adoption of EU policy have an effect on the overall success of EU conditionality. Not all adoption costs are financial; they can be political, such as the impact on the likelihood of re-election<sup>6</sup>. These costs are, in theory, balanced by the benefits of EU rewards. However, if a government deems the cost of compliance too high, then it is unlikely that there will be adoption of EU policy. Moreover, the adoption cost hypothesis proposes that the likelihood of rule adoption decreases with an increase in the number of veto players

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<sup>1</sup> F.Schimmelfenning and U. Sedelmeier “Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe” *Journal of European Public Policy* 11:4 (2004) ,p.661.

<sup>2</sup> Schimmelfenning and Sedelmeier (2004) p.669.

<sup>3</sup> B. Steunenbergh and A. Dimitrova, "Compliance in the EU Enlargement Process: The Limits of Conditionality". *EIoP*, Vol. 11, No. 5, (2007).p.4.

<sup>4</sup> Schimmelfenning and Sedelmeier (2004) P. 663.

<sup>5</sup> Schimmelfenning and Sedelmeier (2004) P. 663.

<sup>6</sup> Schimmelfenning and Sedelmeier (2004) P. 666

incurring adoption costs from compliance<sup>7</sup>; the lower the adoption costs the more possibility of compliance with the EU requirements made via the principle of conditionality.

Drawing upon the 'carrot and stick' approach, the model proposes that compliance with EU rules must be used as conditions for reward; In the case of EU conditionality, fulfilling these conditions may lead to the reward of membership. The determinacy hypothesis suggests the effectiveness of rule transfer increases if rules are set as conditions for rewards and the more determine they are<sup>8</sup>. The External Incentives Model provides that in order for EU conditionality to be successful, the EU must provide clear and precise conditions and associated rewards; the occurrence of a 'moving target' and undetermined rewards weakens the strength of EU conditionality. Moreover, the effectiveness of rule transfer increases with the size and speed of rewards<sup>9</sup>. Thus, the candidate state will take actions to ensure rule transfer when the reward for compliance is powerful enough i.e. on the promise of membership which is to be delivered in a timely fashion. The longer a state is uncertain of the reward and when it will be delivered the slower rule transfer occurs. Thus, EU conditionality will be more effective the quicker the reward of membership is offered to an aspiring member state as a reward for compliance with EU conditions.

The External Incentives Model further provides that the likelihood of rule adoption increases with the credibility of conditional threats and promises<sup>10</sup>. In order to ensure compliance with policy and rule transfer, it is essential that the EU has less-vested interest in giving the reward than the targeted state has on receiving it:. The EU must be able to withhold rewards from states at minimal cost to itself. In 1997, the EU used this condition to exclude Slovakia from the first round of negotiations as the only candidate country not to meet the democracy criteria Conditionality is only credible because the EU is willing to stop the process when a government is not making the progress on crucial domestic reform<sup>11</sup>. Withholding rewards is essential to EU Conditionality as it provides states with an incentive to make the required reforms as they may still benefit from the rewards.

An alternative model used to explain EU conditionality is the Social Learning Model<sup>12</sup>. Based on Social Constructivism, it assumes that countries adopt logic of appropriateness in determining their policy position. According to this logic, actors are motivated by internalised identities, values and

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<sup>7</sup> Schimmelfenning and Sedelmeier (2004) P. 667.

<sup>8</sup> Schimmelfenning and Sedelmeier (2004) P. 664

<sup>9</sup> Schimmelfenning and Sedelmeier (2004) P. 665

<sup>10</sup> Schimmelfenning and Sedelmeier (2004) p.665.

<sup>11</sup> M. Vachudova, "EU leverage and national interests in the Balkans: The puzzles of enlargement ten years on", *Journal of Common Market studies*, volume 52, no.1 (2014) p.134.

<sup>12</sup> Schimmelfenning and Sedelmeier (2004) P. 667.

norms and must choose the course of action that is most appropriate or legitimate<sup>13</sup>. The Social Learning Model proposes that a state adopts EU policy norms if it is persuaded of the appropriateness of EU rule in the context of the state's policy position. This model works on the premise that an applicant state will adopt an EU policy or norm on the basis that it is the most appropriate one to adopt. The weakness of this model is found in the assumption that the EU is the principle source of principles and norms for the applicant states. As the EU grows in South and Eastwardly directions, the EU may not be the principle source of policy norms for the states seeking membership. The example of Turkey highlights that other sources exist to aspirins states; in this case the EU and the Middle East are both provide inspiration for policy. This weakens the plausibility of the Social Learning Model to determine the success of EU conditionality as it fails to have consideration for alternative inspiration.

The final model used to analyse the principle of EU conditionality is the Lesson-Drawing model. This model presupposes that a non-member state adopts EU rules with no incentives or persuasion to do so and that lesson drawing is a direct response to domestic dissatisfaction with the status quo, whereby a state seeks EU rules to resolve the domestic policy problems. Comparable to the Social Learning Model, the Lesson Drawing Model is reliant on the European Union being a source for policy and institution reform, that the European Union provides the most suitable rule and that it is suitable for the domestic situation; The key condition in Lesson-drawing is rule transferability<sup>14</sup>. A state must regard EU policy as one that can be transferred into their domestic setting. If the policy does not fit with the domestic position, the state will not adopt the EU policy. Whilst EU conditionality has been used effectively to encourage reform and policy change, this has not been a result of domestic dissatisfaction. On the contrary, conditionality is predominantly used to encourage domestic policy change due to EU dissatisfaction with domestic policy. Therefore, the Lesson-Drawing Model, may not be the most suitable in this context

The different models which have been developed in regards to EU conditionality have both their weaknesses and strengths. Whilst both the Social learning and Lesson-drawing models, have their strengths, they rely on the EU being the predominant source of inspiration for policy. This may no longer be the case as the poll of aspiring countries shifts further south and East. It is evident that the External Incentives Model provides the most appropriate model of EU conditionality. This is supported by evidence that "the conditional incentive of EU membership was the main force driving

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<sup>13</sup> Schimmelfenning and Sedelmeier (2004) P. 667.

<sup>14</sup> Schimmelfenning and Sedelmeier (2004), p.668.

the incorporation.... rather than an alternative process such as persuasion, identification or social learning”<sup>15</sup> in the 2004 and 2007 enlargements.

#### The Effectiveness of EU conditionality and the External Incentives Model

The research conducted into the effectiveness and impact of EU conditionality is limited due to the difficulty in “isolating the effect of international factors from the domestic incentives for legal, institutional or behavioural change”<sup>16</sup>. Where the EU has employed the tool of EU conditionality to change domestic policy, it is not always possible to isolate EU conditionality as the principle factor resulting in domestic reform due to events at the domestic level. This must be considered when examining the overall effectiveness of EU conditionality in individual case-studies.

In their study on Conditionality, Steunenberg and Dimitrova propose that once the date of accession is set, the EU will no longer be able to rely upon EU conditionality and the candidate country will slow down in its implementation of domestic reforms that are required by the EU for membership<sup>17</sup>. EU conditionality is more effective when the date of accession is not set, as candidates continue to have an incentive to make the required EU reforms. The moment a date is set, this incentive disappears. It is therefore logical to assume that the “the EU will keep the period between announcing the date of accession and the actual accession as short as possible”<sup>18</sup> in order to maximize its ability to influence change.

Furthermore, the reward of accession is far removed from the moment that adoption costs are incurred<sup>19</sup>. The moment that a candidate country incurs any adoption cost, monetary or otherwise, in the implementation of a policy reform in compliance with the EU requirements, questions are raised about its relative benefit compared to the cost. As a result, it is rarely possible to rely on conditionality as a tool to address individual policy reform during the accession process<sup>20</sup>. The use of conditionality is most effective in encouraging general policy reform as per the case study of Latvia and reform for general minority rights. Moreover, the country must perceive the benefits of

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<sup>15</sup>T. Böhmelt and T.Freyburg. "The temporal dimension of the credibility of EU conditionality and candidate states' compliance with the *acquis communautaire*, 1998–2009", *European Union Politics* 14.2 (2013), p.251.

<sup>16</sup> Sasse, Gwendolyn. "The politics of EU conditionality: the norm of minority protection during and beyond EU accession." (2008) *Journal of European Public Policy* 15.6: p.844.

<sup>17</sup> Steunenberg and Dimitrova, (2007)p. .11

<sup>18</sup> Steunenberg and Dimitrova (2007) p.11.

<sup>19</sup> Grabbe, Heather. "European union conditionality and the *Acquis Communautaire*" *International Political Science Review* 23 (2002) p. 263.

<sup>20</sup> Grabbe (2002) p.263.

cooperating with the EU to be larger than the benefits of remaining independent<sup>21</sup>. The candidate country must see some benefit in European Membership. Due to the extensive benefits which come with EU membership, it is rare that the benefits of independence will outweigh the benefits of membership.

#### Latvia: a success story for EU conditionality?

The case study of Latvia demonstrates successful legal and constitutional changes that have occurred as a result of EU conditionality. Sasse claims that "Latvia is the strongest test case for the EU's ability to assert direct influence and encourage the adoption of an EU-promoted norm associated with democratic conditionality"<sup>22</sup>. The principle of EU conditionality was adopted in order to resolve the ongoing Minority issues in Latvia which are a direct result of the Soviet Occupation in Latvia after 1940. This changed the population demographic of Latvia with an increase in the number of Russian minorities, with estimates that the group amounted to between 48%<sup>23</sup> and 42%<sup>24</sup> of the population. As a result, the Native Latvians only just maintained the majority ethnic status across the country, creating ethnic tensions between the Latvian and Russian groups.

The actions taken by the Latvian government following independence did not favour the Russian Minority. The government took the decision to grant Latvian citizenship automatically to those residents who were citizens prior to the Soviet Occupation in 1940 and their descendants and enacted laws on the use of Latvian Language, education and economic rights which indirectly discriminated against the non-Latvian population<sup>25</sup>. Furthermore, the process of naturalization for Russian Minorities in Latvia was very strict, requiring individuals to pass tests in state language, history and constitution and have sixteen years residency alongside a window quota system developed to limit the number of applications permitted each year<sup>26</sup>. This combination of policies resulted in 30% of the population being left stateless<sup>27</sup>, largely consisting of the Russian minority.

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<sup>21</sup> Steunenber and Dimitrova (2007) p.10.

<sup>22</sup> Sasse (2008) p.844.

<sup>23</sup> D. Galbreath, "The politics of European integration and Minority Rights in Estonia and Latvia", *Perspectives on European Politics and Society* 4:1 (2003), p.37.

<sup>24</sup> Sasse (2008) p.848.

<sup>25</sup> A.Pabriks, *From Nationalism to Ethnic Policy: The Latvian Nation in the Present and in the Past* (Berlin: BIAB, 1999), p.151.

<sup>26</sup> G.Schwellnus, "Looking back at ten years of EU minority conditionality vis-à-vis Central and Eastern European candidate states." *European Yearbook of Minority Issues* 4 (2004), p.337

<sup>27</sup> F.Schimmelfennig, S.Engert, and H.Knobel. "Costs, commitment and compliance: the impact of EU democratic conditionality on Latvia, Slovakia and Turkey." *JCMS: Journal of Common Market Studies* 41.3 (2003)p.510.

EU conditionality was used through the Accession Partnerships, in order to align EU recommendations and policy with that of the HCNM, Max Van der Stoep, who demanded that the naturalization process and the non-official use of language be regulated as liberally as possible<sup>28</sup> in Latvia. This alignment created a double edged sword for the EU to encourage policy reform, relying on the expert evidence and advice of the HCNM on the one hand, and its own social influence to make Latvia comply with its minority protection reforms on the other. In December 1993, the EU informed Latvia it would not be admitted as a member if it did not change the Citizenship laws that were indirectly discriminatory to the Russian minority. This threat was not strong enough to ensure that Latvia make the required reforms in policies regarding its minority population, at that time.

As a result, in accordance with Article 49a of the Treaty on the European Union, the Commission presented Latvia its opinions on Latvia's applications for membership together with Agenda 2000 on 17 July 1997. In this report, Latvia was held to be fulfilling the general political criteria for admission. However, the opinion reflected the HCNM's concerns and demanded that Latvia take measures to accelerate naturalization procedures to enable the Russian-speaking non-citizens to become better integrated into Latvian society<sup>29</sup>. The Opinion made it clear that EU membership was not possible due to the cumbersome nature of the naturalisation process for the non-Latvia population and the 'window system' of applications<sup>30</sup>; a reform of the naturalisation process was necessary if Latvia was to successfully gain membership status.

According to the External Incentives Model, the conditions in Latvia were favourable for EU conditionality; domestic adoption costs were low and the conditions referred only to a single policy issue rather than fundamental political practices<sup>31</sup>. Furthermore, the Latvian elite felt threatened by Russia and regarded European integration as a guarantee of Latvian independence<sup>32</sup> and there were potentially high gains in political security and autonomy resulting in clearly positive net political benefits of compliance<sup>33</sup> by gaining EU membership. This pulled the Latvian political elite towards Europe, providing ripe conditions for effective conditionality. The refusal of membership led to amendments to be made to the Latvian Citizenship laws. In June 1998, the Saeima, the Latvian Government, passed amendments to the citizenship law, paving the way for the 'window' system,

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<sup>28</sup> Schimmelfennig, Engert, and Knobel (2003) p.510.

<sup>29</sup> Commission of the European Communities (1997) *Agenda 2000- Summary and conclusions of the Opinions of the Commission concerning the Applications for Membership to the European Union Presented by the candidate Countries*, Brussels, DOC/97/8.

<sup>30</sup> Tugdar (2013) P.41.

<sup>31</sup> Schimmelfennig, Engert, and Knobel (2003) p.511.

<sup>32</sup> Schimmelfennig, Engert, and Knobel (2003) p.511.

<sup>33</sup> Schimmelfennig, Engert, and Knobel (2003) p.511.

the restrictive timetable on citizenship applications, to be abolished. This was confirmed by a referendum in October 1998 which abolished the 'window' system and confirmed the right of children of non-citizens to obtain citizenship<sup>34</sup>. It can be seen that “only when the demands of the High Commissioner on National Minorities were linked to Latvia's accession to western organization.....did the Latvian government and parliament reluctantly give in to international conditions”<sup>35</sup>. Scholars agree that EU involvement was essential to the changes in minority protections occurring.

Whilst the case study of Latvia demonstrates the effective use of Conditionality as a tool of the EU to encourage reform, it is bold to claim that it was a complete success. The 1999 Latvian Language Law has been a cause for concern for the EU in Latvia's post-accession period as the use of the Latvian language remains mandatory in the private sector. This policy is a direct result of the feeling amongst Latvians that they had been placed in an adverse economic position as the Russian language had dominated the economy and administration for decades<sup>36</sup>, undermining the requirements of EU conditionality and placing limits on reforms. It has emerged that no checks and balances were in place to ensure that the changes made to minority rights had any real impact on the ground. Mungiu-Pippidi has likened the monitoring to a Doctor, suggesting that “It is as if a doctor evaluated a patient by the number of prescribed medicines, rather than by measuring the patient's fever to check on the effect of the medicines”<sup>37</sup>. Furthermore, Commission officials admit they were sometimes too naïve in being impressed by the adoption of legislation and that they should have looked more at the reality on the ground<sup>38</sup>. It is evident that the Commission assumed that Latvia reforming the legislation would have a positive impact. The reforms were never assessed for actual effect on minority rights, which has been suggested to have remained the same if not reduced since Latvia gained membership status<sup>39</sup>.

The success of EU conditionality on the reform of Latvia's minority protection policies is further questioned by Latvia's refusal to ratify the Framework Convention on National Minorities as part of its accession process. This demonstrates the lack of importance placed on minority right issues by the Latvian government. Moreover, 2003 official reports stated that Latvia still had important short fallings in terms of incorporating the full *acquis* and Latvia was encouraged to accelerate the speed

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<sup>34</sup> Sasse (2008) p.849.

<sup>35</sup> Schimmelfennig Engert, and Knobel (2003) p. 512.

<sup>36</sup> Tugdar (2013) P.40.

<sup>37</sup> A.Mungiu-Pippidi, “EU Accession is No ‘End of History’”, *Journal of Democracy*, 18:4 (2007), p.15.

<sup>38</sup> G.Pridham, “Securing the only game in Town: The EU's Political conditionality and Democratic Consolidation in Post-Soviet Latvia” *Europe-Asia Studies*, 61.1 (2009) p.62.

<sup>39</sup> Pridham (2009)p.78.

of the naturalisation procedures and promote the integration of the Russian minority<sup>40</sup>, which were still not meeting the required European level. It is possible to conclude that “while Latvia followed the demands of the EU, the primary aim of EU conditions, full integration of all Russian speakers remains unfulfilled”<sup>41</sup>, putting limits on the overall success of the EU conditionality programme on minority rights in Latvia. However, it must be remembered that without EU conditionality it is questionable that any reforms would have occurred at all.

The overall effectiveness of EU conditionality in the 2004 and 2007 wave of enlargements had mixed results. Whilst it was most successful in the area of minority rights, the case study of Latvia demonstrates limitations of conditionality through the Accession Partnerships. Furthermore, the post-accession compliance with EU policy and norms remains low amongst new member states

#### The future of EU conditionality: the shift to an individual approach

Following the 2004 and 2007 enlargements, the attention of the EU shifted towards the Balkans whose needs and requirements are substantially different from that of the CEECs, due to the recent history of the region. In an attempt to improve the enlargement process, “the EU sought to tailor the instrument to the conditions of the post-violent conflict states of the Balkans”<sup>42</sup>. The development of the Stabilization and Association Process saw the EU “strengthening its conditionality, control and pressure on the West Balkans during the earlier stage of the pre-accession and pre-association and pre-candidacy process”<sup>43</sup>. The aim of the Stabilisation and Association Process was to aid the post-conflict stabilization process of the countries in the region and facilitate the continued political and economic stabilisation of the region, working toward to political and economic stability to a sufficient level for integration into the EU. It has developed a prolonged process of accession with greater opportunity for conditionality to be used to ensure compliance with EU norms and policy.

The first stage of conditionality for the candidate countries was outlining common principles at a regional level in 1996 and setting criteria in April 1997. These conditions include the Copenhagen Criterion, with the addition of the requirements of cooperation with the ICTY, willingness to re-establish economic cooperation, respect for democratic principles, Human right and Minority Rights

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<sup>40</sup> Tugdar (2013) P.46.

<sup>41</sup> Schwellnus (2004) p.337

<sup>42</sup> C. Gordon, "The Stabilization and Association process in the Western Balkans: An effective instrument of post-conflict management?" *Ethnopolitics* 8.3-4 (2009) p.328.

<sup>43</sup> O. Anastasakis "The EU's political conditionality in the Western Balkans: towards a more pragmatic approach." *Southeast European and Black Sea Studies* 8.4 (2008) p.368

and creation of the rule of law. On the fulfilment of the conditions, negotiation of the Stabilisation and Association Agreement may commence. The negotiations last on average one year and a tailored conditionality criteria is developed for each country. Upon signing the agreement, ratification by both the state and the EU is necessary; only once the Stabilisation and Association Agreement was implemented into domestic policy can the country apply for candidacy status. The EU is able to change the conditions after negotiations have ended. This creates difficulties in compliance for the West Balkan states, with the issue of a moving target.

The Stabilisation and Association Process in the Western Balkans has some key features which differentiate it from earlier enlargement processes. The offer of EU membership is made at an early stage of the enlargement process in comparison to the CEEC enlargement process. By laying the offer of membership on the table upfront it provides aspiring states with an adequate reward for compliance from the outset; states are more likely to comply with EU conditionality as the reward is determined. On the other hand, an offer of membership at an early stage of the process may also reduce compliance as it removes the incentive to comply. Set out in the general conditions and the individual Stabilisation and Association Agreement, the council has also tried to address and develop a process of monitoring. The key mechanism of monitoring the Stabilisation and Association Process is the annual progress reports, introduced in 2001, with the aim of assessing the compliance of the countries of the Western Balkans. However, the current record of compliance with these reports raises questions of their effectiveness. For example, the Stabilisation and Association Agreement for Bosnia and Herzegovina was signed on the 16<sup>th</sup> June 2008<sup>44</sup>, and the country has not, to date<sup>45</sup>, complied with the EU requirements necessary to allow it to proceed in the accession process.

This multistage process prolongs the membership process of aspiring states. For the EU, a prolonged process has the potential to increase the effectiveness of conditionality as an instrument to induce compliance<sup>46</sup>. By prolonging the process, it is expected that the EU will more opportunity to influence states to improve both the effectiveness of conditionality and post-accession compliance. Whilst it has been noted that there are significant time gaps between the stages of the Stabilisation and Association Process, Croatia is an exception to this with accession on the 1<sup>st</sup> July 2013.

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<sup>44</sup> Stabilisation and Association Agreement (SAA) between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part (2008)

<sup>45</sup> April 2014.

<sup>46</sup> C.Gordan, "EU conditionality and the protection of minorities in the post-communist region" *European Yearbook of Minority Issues* volume 7 (2007) p.271.

### EU conditionality in Bosnia and Herzegovina

The political climate in Bosnia and Herzegovina has been at best turbulent, and at its worst been struck by civil war in its most recent history. The collapse of the Former Republic of Yugoslavia led to the country to fall into a three year civil war which only came to end by the internationally negotiated Dayton agreement. As a result, “for many years there has been a tendency to view Bosnia and Herzegovina as a political problem requiring a political solution”<sup>47</sup>. This exists in conjunction with the ‘Europeanization paradigm’ whereby the country is in the process of adopting EU standards and norms, towards eventual EU membership<sup>48</sup>. These juxtaposed interpretations of Bosnia and Herzegovina have resulted in difficulties for the EU to effectively inspire policy reform.

EU conditionality was first used in Bosnia and Herzegovina to encourage the country to comply and reform shortly after the end of the war. The Western Balkans region required a tailored approach given its complexities and ethnic tensions and in 1996 the ‘Regional approach’ was adopted; it was to serve as the “basis for a coherent and transparent policy towards the development of bilateral relations, in the field of trade, financial assistance and economic cooperation, as well as contractual relations”<sup>49</sup>. The Regional approach was amended in 1997 to include political and economic conditions to the regional approach to be fulfilled by the target countries<sup>50</sup>. The Regional approach maintained the traditional Brussels-individual country bilateral mode of interaction<sup>51</sup> and suffered weaknesses with unclear benchmarks, inconsistencies and moving targets, ultimately leading to only limited success.

This sparked the development of the Stabilisation and Association Process in 1999 as outlined above. This was supplemented in 2003 by the Thessaloniki European Council meeting which provided further requirements including Cooperation with the ICTY, reform of governance, reform of public administration and the judiciary and protection of Human Rights<sup>52</sup>. Furthermore, following the ruling of the Sejdic and Finci v Bosnia and Herzegovina case, the fulfilment of the judgement, amending the constitution to allow ethnic minorities to run as candidates for positions of government was added

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<sup>47</sup> R.Domm, "Next steps on Bosnia-Herzegovina: key elements to a revised EU strategy." *Southeast European and Black Sea Studies* 11.1 (2011)

<sup>48</sup> Domm (2011) p. 55.

<sup>49</sup> B. Dobrikovic “EU conditionality in post conflict states: a comparative analysis of Bosnia and Herzegovina and Cyprus” available at [www.etd.ceu.hu/2012/dobrikovic\\_bianca.pdf](http://www.etd.ceu.hu/2012/dobrikovic_bianca.pdf) (2012), p.35.

<sup>50</sup> Dobrikovic (2012) p.35

<sup>51</sup> Gordan (2009) p.328.

<sup>52</sup> G. Aybet, and F. Bieber. "From Dayton to Brussels: the impact of EU and NATO conditionality on state building in Bosnia & Herzegovina." *Europe-Asia Studies* 63.10 (2011) p.1920.

as a condition for membership, along with the adoption of the 2012 budget<sup>53</sup>. Conditionality has only had limited success in Bosnia, with tension-ridden ethnic relations cited as the principle cause for this. It has been suggested that EU conditionality has been met with inertia and caused deterioration in ethnic relations<sup>54</sup>. According to the External Incentives Model, in Bosnia and Herzegovina, the cost-benefit assessment does not suggest an effective environment for EU conditionality. The perceived value of eventual membership is considered lower than the value of maintaining the current status quo of ethnic relations<sup>55</sup>, as demonstrated by the attempts of the EU to use conditionality to reform the police system.

The EU first highlighted police reform as a necessary in the 2003 feasibility study, which led to requirements for police reform. The European Commission informed Bosnia that these reforms were compulsory to conclude the Stabilisation and Association Agreement and allow progression in the membership process. The required reforms included a relocation of budgetary and legislative decisions to state level, redrawing policing districts on technical grounds and elimination of political interference<sup>56</sup>. Whilst a number of reforms were proposed, any initiative failed and no police reforms were implemented in the necessary time frame. The political elites involved in the reform negotiations were not willing to compromise. The reward of EU membership did not balance the loss of exclusive control of their own police in the eyes of the Bosnian Leaders. This was especially the case of the Bosnian Serbs who were not willing to lose exclusive control of the Republika Srpska police<sup>57</sup>; Dodik, the leader of the SNSD, argued that independent police forces of the Republika Srpska were more important than joining the EU<sup>58</sup>. Furthermore, the Bosniak political parties demanded the abolition of separate police structure.

The incentive of EU membership through conditionality ultimately failed to entice Bosnian politicians to make the necessary police reforms as ethnic tensions are stronger than any incentive provided by the EU. Europe failed to acknowledge how deep the ethnic tensions in the country were rooted and made no account for this in their reform efforts. The EU softened its demands for reform and accepted minor and formal reforms<sup>59</sup> and the Stabilisation and Association Agreement only

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<sup>53</sup> Dobrikovic (2012) p.36.

<sup>54</sup> G. Vasilev, "EU conditionality and ethnic coexistence in the Balkans: Macedonia and Bosnia in a comparative perspective." *Ethnopolitics* 10, (2011), p.58.

<sup>55</sup> Vasilev (2011) p.58.

<sup>56</sup> Vasilev (2011) p.58.

<sup>57</sup> Vasilev (2011) p.59.

<sup>58</sup> V. Džihic and A. Wieser. "Incentives for Democratisation? Effects of EU Conditionality on Democracy in Bosnia & Hercegovina" *Europe-Asia Studies* 63.10 (2011)p.1813.

<sup>59</sup> Džihic and Wieser (2011) p. 1814.

signed in 2008 after EU accepted a domestic compromise<sup>60</sup> after it was decided it was better to have limited reform than prolonging and deepening the deadlock<sup>61</sup>. The softening of EU conditionality inspired the conflicting parties to continue to openly question demands by the EU and the appliance of EU conditionality has diminished by the domestic set up of the country<sup>62</sup>.

The main weakness of the EU conditionality in the case of Bosnia and Herzegovina was the fact that reform was driven by external bodies. Any agreement for reform of the police would only be achieved through pressure and coercion rather than a genuine commitment to reform by the political elites, with the EU supporting a solution that was not built by Bosnia and Herzegovina<sup>63</sup>. The focus on the political elites resulted in the police professionals themselves being distanced from the reform process. If the police forces were directly involved, it may have been possible to develop a suitable solution. Furthermore, the police reform lacked the level of 'technocratic legitimacy' possessed by defence reform<sup>64</sup>, making it ineffective for the reforms necessary.

Following on from the failed attempts of Police reform and other conditions for membership, the 2008 progress report held that Bosnian "behaviour was not compatible with European values and that it jeopardised their EU perspective"<sup>65</sup> an opinion that has been repeated in subsequent reports. The tailored conditions for Bosnian membership into the EU demonstrate that the EU clearly identified its concerns for the country and offered its solution to the situation. However, EU conditionality will not be effective in the current ethnic climate. Whilst the EU has attempted to alter the quality of the ethnic leader's interactions with one another, the incentives failed to present themselves as a powerful antidote to unruly conduct among ethnic leaders<sup>66</sup>. This is seen in the current attempts to find a solution to the judgement of the minority rights case of *Sejdic v Finci* case, in which the ethnic leaders have thus far failed to reach an agreement in how to implement the ruling. Until the leading parties are willing to compromise and come to a greater consensus to find a solution, the necessary reforms are not possible pushing European Membership further away.

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<sup>60</sup> Domm (2011) p.57.

<sup>61</sup> Džihic and Wieser (2011) p.1814.

<sup>62</sup> Džihic and Wieser (2011) p.1814.

<sup>63</sup> Aybet and Bieber (2011) p.1925.

<sup>64</sup> Aybet and Bieber (2011) p.1926.

<sup>65</sup> Balkan Insight, EU launches diplomatic offensive on Bosnia (2008) available online at <http://www.balkaninsight.com/en/article/eu-launches-diplomatic-offensive-on-bosnia>

<sup>66</sup> Vasilev (2011) p.59.

### Effectiveness of the SAP and EU conditionality in the Western Balkans

The Stabilisation and Association Agreements have had mixed results in their success for promoting reform in the Western Balkans. Whilst Europe has looked to create a tailored programme of EU conditionality for the Western Balkans, this programme adopts a one size fits all ideology. The EU has wrongly assumed that each state of the region can be strengthened and 'Europeanized' in a single framework. The Stabilisation and Association Agreements have proven to be insufficient to overcome the aftermath of the wars in each state and unable to facilitate a shift towards a greater emphasis on association and integration<sup>67</sup>. There is a need to move away from a one size fits all style programme of enlargement and took to more individual schemes for reform, tailored to the history and needs of each state.

According to Borzel and Risse, "EU membership has not motivated Balkan leaders very strongly to undertake the necessary reforms as was the case in CEEC where regime transformation had been peaceful"<sup>68</sup>. Rather, EU involvement has added further layers to the turbulent political conditions in the region, by requiring additional conditions and criteria to already politically weak counties. This raises concerns over the credibility of a reform programme that has the potential to further destabilise a country. Moreover, the Stabilisation and Association Agreement suffers the same weaknesses as its predecessor used in Latvia, the Accession Partnerships. Both enlargement programmes lack inherent fluidity, are inconsistent and suffer from the 'moving target' problem<sup>69</sup>. Thus, whilst attempts to improve the conditionality aspect of the enlargement process have been made, they have not overcome the difficulties faced in encouraging reform in the earlier rounds of enlargement.

The double standards issue in the EU enlargement process is also evident weakening the strength of EU conditionality to encourage compliance with EU policy and norm. The "EU has not established requirements which are neither shared by all Member States, nor does it possess clear instruments or standards for measuring these"<sup>70</sup>; through the Stabilisation and Association Agreements the EU has developed reform requirements that are not universal to member states nor all aspiring member states of the EU. Moreover, the approach taken by the EU is inconsistent in its pursuit of compliance between the different states in the region. Whilst the EU has adopted a rigorous assessment of

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<sup>67</sup>Gordan (2007) p.291.

<sup>68</sup>T.A. Börzel and T. Risse. "One size fits all! EU policies for the promotion of human rights, democracy and the rule of law." *Workshop on Democracy Promotion*. Vol. 4.(2004).

<sup>69</sup>Gordan (2007) p.273.

<sup>70</sup>Sasse (2004) pp: 64-71.

compliance in some cases it has been more adaptable and pragmatic in other instances<sup>71</sup> which further weakens conditionality in the Western Balkans. Whilst the EU has acknowledged that each country in the region has its own distinct ethnic make-up and associated tensions, they do not go far “enough to tackle the distinctive nature of the problem of minorities in Western Balkans”<sup>72</sup>.

Furthermore, the EU’s approach continues to suffer from a lack of clear and unified benchmarks and standards<sup>73</sup>. This leads to difficulties in measuring progress, despite the creation of the annual reports and ill-targeted activities<sup>74</sup>.

### The future of EU engagement in Bosnia and Herzegovina

The failure of EU conditionality to have any real impact on reform in Bosnia and Herzegovina has led to questions in how the EU can still be involved in the democratisation of state. The recent protests in Bosnia demonstrate that the country remain highly de-stabilised and the EU should strive to find what role it can play in the current situation. It is evident that nineteen years on from Dayton, Bosnia still require external political interventions. A key role the EU can utilise to continue to be influential in Bosnia and Herzegovina is through the Office of High Representatives and the EU special Representatives. Since 2005, these positions have been held by the same person. It is proposed that by separating these functions it would allow the international community to resume the position of the High Representative as ‘guarantor of Dayton’ and the controversial Bonn powers, and would allow the EU special representative to focus on promoting EU integration<sup>75</sup>. Experiences have shown that the imposition of policy and legislation does not work in the long term in Bosnia and Herzegovina. Therefore, the EU special representative should play a dual role towards stabilising the country moving the country in its road to Europe. A priority for both High representative and the Special Representative should be to facilitate an increasingly unified EU position<sup>76</sup>.

The credibility of the EU in Bosnia and Herzegovina must be improved, in order to increase the likelihood of the political elite in Bosnia and Herzegovina reaching the compromises required by the EU for membership. Credibility can only be achieved if the EU stops demonizing nationalist politicians<sup>77</sup>. A mutual respect is essential for the EU to be seen as a credible actor. Furthermore, offering a consistent and credible EU membership perspective may improve the effect of EU

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<sup>71</sup> Anastasakis (2008) p 366.

<sup>72</sup> Gordan (2007) p.283.

<sup>73</sup> Gordan (2007) p.284.

<sup>74</sup> Gordan (2007) p.284.

<sup>75</sup> Domm (2011) p.58.

<sup>76</sup> Domm (2011) p. 58.

<sup>77</sup> Domm (2011) p.60.

conditionality. Despite signing the Stabilisation and Association Agreement in 2008, Bosnia and Herzegovina has made little progress in the past six years to comply with the *Acquis Communautaire* and the additional requirements for progression in EU accession. As demonstrated by the issue of police reforms, conditionality has been unable to alter political actor's behaviour and promote consensus and compromise. The sheer number of political conditions has a frustrating impact on EU conditionality; there are at present simply too many reforms required by the EU, that Bosnia has little way of knowing which to prioritise. The creation of clear hierarchy of requirements may improve this. Furthermore, there is a need to look at the long-term future of Bosnia and Herzegovina. At present, the EU tends to place emphasis on the journey rather than the outcome. Bosnian citizens think membership unlikely before 2022, which makes it seem a distant issue<sup>78</sup>. By shifting the focus to the final outcome of EU membership, creating a pragmatic policy to reform, Europe may be able to gain support from the general public, which may lead to a possible change in political elite's opinion.

### Conclusion

The ability of the European Union to influence aspiring member states to make the necessary reforms to create domestic policy and institutions that are both stable and strong enough for membership into the EU is essential to a successful enlargement programme. The enlargement process itself provides the EU with its best opportunity to ensure that reforms are made by aspiring states to bring them in line with European norms through the process of EU conditionality. This paper sought to ask what influence does EU conditionality have upon states with European Union Aspirations and has that influence diminished since 2007?

Whilst the Stabilisation and Association Agreements were developed in response to the weakness of the Accession Partnerships, neither mechanism has proven entirely effective in ensuring compliance with general EU requirements either pre or post accession. Both mechanisms have suffered from a lack of clarity and vague definitions making it difficult to determine the necessary reform and have suffered from a lack of clear benchmarks and ineffective monitoring systems. However, the Latvia demonstrates the success of EU conditionality through the Accession Partnerships in the area of minority rights, often being cited as the most successful example of EU conditionality<sup>79</sup>, though there have been questions raised in regards to its post-accession

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<sup>78</sup> Domm (2011) p.59.

<sup>79</sup> See J. Kelley, *Ethnic Politics in Europe. A power of Norms and Incentives*, (NJ: Princeton University Press, 2004)

compliance. Minority rights for the Russian minority population are still highlighted as a cause for concern in Latvia, even after they ratified the Framework Convention on National Minorities.

The Stabilisation and Association Process has not proven as successful in ensuring reform in the Western Balkans. To date, the only state to have gained membership status through this mechanism is Croatia<sup>80</sup>, and the difficulties faced in achieving domestic reform in Bosnia and Herzegovina highlights the resistance that EU conditionality is being faced with in the region. The Stabilisation and Association Agreement has attempted to create a tailored programme of reform for the region but has failed to acknowledge the distinct needs of each individual state within the region. The limited success of the Stabilisation and Association Agreement, thus far in encouraging reform would indicate that the EU's ability to influence aspiring states has reduced since the 2004 and 2007 enlargements.

It is evident that the power-sharing mechanisms created by the Dayton Agreement based on ethnicity have led to a dead lock situation on all areas of reform that form part of the EU accession process. The 'national interest' is viewed as more important than the future of Bosnia and Herzegovina with the 'entity veto' becoming a major obstacle for decision making. The reliance by political elites on the ethno-nationalist arguments means that changing the state structure and implementing the *acquis* would incur significant political costs<sup>81</sup>, which according to the External incentives model, does not provide for effective EU conditionality. "EU conditionality has limited potential to strengthen democracy as, in its current form, and in view of the existing state structures of Bosnia and Herzegovina, it provides only limited incentives for national elites to comply with the conditions set by the EU"<sup>82</sup>. The recent announcements by Catherine Ashton that EU policy should shift to the economy development in Bosnia and Herzegovina, demonstrates that, the EU accepts that at present, it does not have the ability to inspire change in Bosnia and Herzegovina on the necessary reform for EU membership and that Bosnia's journey to Europe may take much longer than anyone could have predicted.

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<sup>80</sup> As of 1<sup>st</sup> July 2013 Croatia is the only Balkan state to have gained membership.

<sup>81</sup> Džihic and Wieser (2011) p.1803.

<sup>82</sup> Džihic and Wieser (2011) p.1803.

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