

**The Transformative Power of the European Union:**

*Effectiveness of EU conditionality in Croatia and Bosnia and Herzegovina.*

Master thesis

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***List of Abbreviations:***

AP:	April Package
BiH:	Bosnia and Herzegovina
CEECs:	Central and Eastern European Countries
DPA:	Dayton Peace Agreement
EA:	Europe Agreement
EC:	European Communities
ECHO:	European Commission's Humanitarian aid Office
ECSC:	European Coal and Steel Community
EP:	European Partnership
EU:	European Union
FBiH:	Federation of Bosnia-Herzegovina
FPJ:	Forum for Prosperity and Jobs in Bosnia and Herzegovina
HDZ:	Croatian Democratic Union
ICTY:	International Criminal Tribunal for the former Yugoslavia
OHR:	Office of the High Representative
RS:	Serb Republic
SAA:	Stabilization and Association Agreement
SAP:	Stability and Association Process
SBiH:	Party for Bosnia and Herzegovina
SNSD:	Serb Alliance of Independent Social Democrats
SP:	Stability Pact

## ***Introduction***

Ever since the inception of the first European Communities in the 1950's, enlargement and European integration were consistently present on the agenda. Over the course of its history there has seldom been a time in which no membership applications were pending, no new members were preparing and being prepared to enter or when new members were actually acceding. Thus, enlargement can be seen as an ongoing process in the history of the European Communities (EC) and the European Union (EU).<sup>1</sup>

The European Commission considers enlargement to be the most powerful and effective transformation mechanism of the EC/EU. 'It serves the EU's strategic interests in stability, security, and conflict prevention.'<sup>2</sup> This exact view is supported by a broad group of scholars. These scholars agree that enlargement has singlehandedly enabled the European community to spread peace and democracy, first in Spain and Greece in the 70s and more recently in the Central and Eastern European Countries (CEECs).<sup>345</sup>

The process by which countries are being admitted into the EC/EU, has been evolving along with the various enlargement rounds. With every round new accession requirements have been added and/or existing requirements were strengthened. One of the most developed aspects of the enlargement strategy of the European Union is the use of conditionality. This refers to a strategy in which the EC/EU sets rules as conditions which the aspiring future member states have to adhere to in order to get their reward. Of these rewards, of course the ultimate carrot is full EU membership.

After the most extensive enlargement round of the EU in 2004 and 2007, when 12 countries joined the European Union almost at once, the countries of the Western Balkans seemed to be the next in line. The EU had been drawing the region closer with various coordinated efforts since 1996. However, up until now only Croatia, the clear frontrunner of the region, has managed to actually accede into the EU. The other countries of the region, Serbia, the Former Yugoslav Republic of

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<sup>1</sup> N. Nugent, *European Union Enlargement* (New York 2004) 1.

<sup>2</sup> 'Communication from the Commission to the Council and the European Parliament, enlargement strategy and main challenges 2008-2009' (version 04-03-2016) [http://ec.europa.eu/enlargement/pdf/press\\_corner/key-documents/reports\\_nov\\_2008/strategy\\_paper\\_incl\\_country\\_conclu\\_en.pdf](http://ec.europa.eu/enlargement/pdf/press_corner/key-documents/reports_nov_2008/strategy_paper_incl_country_conclu_en.pdf) (5-11-2008).

<sup>3</sup> K. Archick, V.L. Morelli, 'European Union enlargement' (version 05-03-2016) <https://www.fas.org/sfp/crs/row/RS21344.pdf> 19-02-2014.

<sup>4</sup> M. Geoana 'Enlargement is the EU's strongest foreign policy tool' (version 05-03-2013) <https://euobserver.com/opinion/29078> 1-12-2009.

<sup>5</sup> F. Bindy, *The foreign policy of the European Union, assessing Europe's role in the world* (Washington 2010) 208.

Macedonia, Montenegro, Albania, Kosovo, and Bosnia and Herzegovina (BiH) are all at various points in the accession process.

Where Croatia had established itself as the clear frontrunner since 2000, BiH has been the region's most serious laggard ever since the beginning of the process. For years, BiH did not manage to achieve any clear progress towards a next step in the process, let alone actual accession. However, it seems that since December 2014 things have been changing for the better in BiH. A new initiative, started by the United Kingdom and Germany, resulted in the Stabilisation and Association Agreement finally entering into force on the 1<sup>st</sup> of July 2015 and eventually the formal membership application of BiH on 15 February 2016.

The accession process for the Western Balkans as laid out by the European Union started in 1997 with in the Regional Approach and after 2000 in the Stability Pact (SP) and most importantly the Stabilisation and Association Process (SAP). These efforts were meant to function as a framework to guide the accession process of all the countries in the region. However, the countries would be evaluated on their own merits, no country would be held accountable for the lack of progress of another. By now, this process has been underway for almost twenty years and actual accession is still far away for most of the remaining countries. Croatia, prior to 2000, also had big troubles with meeting the EU's demands connected to the Regional Approach. However, after 2000, Croatia started to make headway in the process, leading to its eventual accession in 2013. BiH on the other hand, has remained the region's most serious laggard and only recently some progress seems to be made. The fact that the level of progress made by Croatia and BiH has been so fundamentally different, while being part of the same accession process poses the following question: *how has the EU applied political conditionality in Croatia and Bosnia and Herzegovina between 1997 and 2015 and how effective has it been?*

By comparing the accession processes of Croatia and BiH, this research will try to evaluate the effectiveness of EU conditionality in the Western Balkans. Comparing the most successful country of the region, Croatia, and the country with the most troubles making progress, BiH, the accession policy of the EU can be effectively evaluated. Differences in the approach of the EU can be identified and analysed to find out whether or not these differences contributed to the different levels of progress.

Additionally, the fact that BiH was able to have its Stabilization and Association Agreement enter into force in 2015 and that it has formally applied for membership early 2016 makes for an interesting case. BiH being finally able to make some strides towards membership offers an

opportunity to identify whether, and if so how, the EU has changed their approach towards BiH, thereby pushing the process forward. Thus, with these recent developments, an opportunity to make a sound evaluation of the EU's enlargement policy in BiH has come up.

When studying the effects of EU conditionality in the Western Balkan one can identify three strands of arguments. The first group of scholars argues that the European Commission has been using a well-planned and coherent strategy in handling the accession process of the Western Balkans. An example of the positive evaluation of EU conditionality is given by Hazel Smith. She argued in 2002 that 'the EU has proved itself adept in both developing existing instruments and developing new initiatives designed to deal with the specific economic and political instability in the area.'<sup>6</sup>

The second strand of scholars focusses on the shortcomings of the European Union and their application of conditionality used in the Western Balkans. These critical analyses started to come up mostly after the CEEC enlargement round had been completed, the lack of progress of the countries in the Western Balkans started to cause criticism. Among these scholars are O. Anastasakis, D. Bechev and F. Bieber. The overall tendency among these scholars is that the EU's approach towards the Western Balkans lacks: clarity of conditionality<sup>7</sup>, political will and capacity<sup>8</sup>, commitment,<sup>9</sup> and respect for the heterogeneity of the region<sup>10</sup>.

The third strand of scholars analyses the Western Balkan enlargement strategy of the EU within the dynamics of capitalism. These studies emphasise the opportunities the end of the cold war provided for the EU to expand its influence in continental Europe. In turn the willingness of the former communist countries to be incorporated into the Union strengthened this influence for the EU. In the case of the Western Balkans these scholars, most notably Mustafa Turkes and Goksu Gokez, conclude that the EU has pursued a strategy of neither total exclusion nor rapid integration. This strategy has resulted into solving problems by creating new problems. The Commission's neoliberal restructuring has led to a reproduction of authoritarian rule instead of democratization.<sup>11</sup>

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<sup>6</sup> Hazel Smith, *European Foreign Policy, What it is and What it does* (London, 2002) 259

<sup>7</sup> F. Bieber, 'Building Impossible States? State-Building Strategies and EU Membership in the Western Balkans' *Europe-Asian Studies* 63:10, 1783-1802 (Oxford 2011) 1799.

<sup>8</sup> O. Anastasakis, 'The EU's political conditionality in the Western Balkans: towards a more pragmatic approach', *South East European and Black Sea Studies*, 8:4 365-377 (2008) 375.

<sup>9</sup> O. Anastasakis, D. Bechev, 'EU Conditionality in South East Europe: Bringing Commitment to the Process', *South East European Studies Program* (Oxford 2003) 3.

<sup>10</sup> D. Bechev, 'Carrots, sticks and norms: the EU and regional cooperation in Southeast Europe', *Journal of Southern Europe and the Balkans Online*, 8:1, (2006) 41.

<sup>11</sup> M. Türkes, G Gökez, 'The European Union's Strategy towards the Western Balkans: Exclusion or integration?', *East European Politics & Societies* vol. 20 no. 4 659-690 (2006) 689.

However, when looking at the field of study covering EU conditionality in the Western Balkans it is remarkable that most of the research is done in the form of a case study, singling out one particular country in the region, or more of a macro approach is taken, looking at the region as a whole. This research, as abovementioned, will be comparing the approach taken by the EU in Croatia and BiH and identify why the taken approach has been effective or not. By comparing two cases it is possible to take a case study approach with in depth analysis while also being able to zoom out and identify differences in the two cases. This way the positive aspect of the case study, deep understanding about the case, and the advantage of a macro approach, being able to make a comparison, are combined.

In addition, recent developments in BiH have yet to be placed within the historical context of BiHs accession process. Now that BiH has made the next step in the accession process after almost ten years of complete standstill, identifying how and why BiH was able to make this step will be an important addition to the academic field. Sketching an historical overview of the accession process of both countries up until the recent membership application of BiH will be a welcome update to the academic field.

This paper will be structured in a way as to portray a clear and chronological picture of the accession process of both countries. The first chapter will be focused on lining out the methodological framework along which this research will be structured. This framework will mostly be built around the external incentives model of Frank Schimmelfennig and Ulrich Sedelmeier. This model has been a dominant model in evaluating the effectiveness of EU conditionality in the context of the CEEC enlargement round. In the context of the accession process of the Western Balkans this model has not yet been used effectively. In using this model in a different enlargement round, the comprehensiveness of the external incentives model can be tested. This test will be done by the incorporation of a second theory on conditionality. This theory has been constructed to deal with the lack of operationalization of the effects national identity and due to the specific ethnic history of the region. Therefore, the external incentives model will be supplemented with the theory on the effects of national identity on conditionality, created by Freyburg and Richter. This combined approach has not yet been used in the context of the accession process of the Western Balkans. Therefore, this approach will be an interesting starting point. Again, especially now that BiH has started to make progress this case will also be an interesting test case to see if the external incentives model is also comprehensive enough to evaluate the effectiveness of conditionality in the Western Balkans.

The second chapter will illustrate how EU conditionality in relation to the Western Balkans has evolved over time. This chapter will provide a clear overview of the accession process in the Western Balkans over the years. Therefore, this chapter will be focused on providing a solid background of the overall accession process. As for the sources used, secondary literature on the development of the EU's accession policy will be the main source of information. Most notably, S. Blockmans, D. Kochenov, D. Bechev, and A. Anastasakis, will be used in this chapter. When it comes to the portrayal of a detailed overview of the development of the relationship of the EU with the Western Balkans up to 2007, Blockmans is one of the most authoritative scholars. His comprehensive work forms the foundation of almost all academic writings on the subject after 2007. Blockmans' work was picked up by J. Cohen, who has written a comprehensive overview of the process of democratization of the Western Balkans up until 2011. With this work, Cohen has drawn the research of the Western Balkan into the larger realm of democratization. By doing so he positioned efforts the EU within the bigger picture of international democratization initiatives in the region. The same authoritative position has Kochenov's work which has been instrumental in dissecting the workings and effectiveness of the EU enlargement policy based on Treaty texts and customary law. Lastly, Bechev and Anastasakis have proven to be highly adept in evaluating the accession process of the Western Balkans and therefore provide a solid base to build upon, forming this informative chapter.

Thirdly, a precise portrayal of the enlargement process of Croatia and BiH thus far will be given. In order to be able to determine whether or not conditionality has been effective, certain key moments during the accession process of each country will be selected. These key moments are moments in which the candidate state was close to or on the verge of entering a new stage in the accession process but where non-compliance blocked progress. By examining how this situation arose, how the EU reacted to resolve the matter and whether or not this approach was effective will provide the opportunity to closely monitor the workings and effectiveness of conditionality. In this chapter secondary literature will mostly be used to describe the overall political situation. However, to monitor the progress made, primary literature will be the main source of information. When looking at the progress made regarding the Regional Approach the various Conditionality Reports that were issued twice a year will be instrumental. The same goes for the Progress Reports, issued once a year by the EU to evaluate the progress made in the context of the Stabilization and Association Process. These primary sources will not only be informative with regards to the progress made by the respective countries but also provide an interesting insight in the ways of evaluation of the EU. Analysis of these papers will bring possible discrepancies between paper and practice to light.



In the fifth and last chapter the information gathered in chapters two, three and four will be put together into the external incentives model. The model will be used to make a separated analysis of the Regional Approach and the Stabilization and Associations Process. At the end of this chapter the role of national identity will be analysed to decide whether or not identity has effectively influenced the effectiveness conditionality. By doing so it will be able to conclude whether or not the external incentives model as it was constructed for the evaluation of the CEEC enlargement round also provides a solid basis to do the same for the Western Balkans enlargement round.

## Chapter 1: Theoretical framework and methodology

This first chapter serves to lay down a clear methodological framework along which this research will be structured. First of all, there are several key terms that need to be defined in order to pin down the exact meaning and goal of this research. To make an evaluation of the effectiveness of ‘conditionality’, the term has to be clearly defined, the same goes for democracy and democratization.

The second part of this chapter will start by providing an overview of the general debate between rationalism and constructivism. By giving an overview of this overarching debate within the study of International Relations the merging of the external incentives model, a model based on rationalist bargaining principles, and the theory of national identity, a constructivist model, can be placed within this overarching debate. These two theories will form the theoretical framework of this research and will be described in this chapter.

### *1.1 Conditionality defined.*

In order to evaluate the effectiveness of democratic conditionality in the Western Balkans a definition of political democracy and democratization is needed. The last few decades the definition of political democracy has been debated over and over again. The abundance of different definitions is only logical if one considers the wide range of countries calling themselves democratic. Therefore, it is impossible to come to one definition that is overall accepted. For the purpose of conducting this research we will focus on what the European Union (EU) sees as elements of democracy. By looking had the various documents related to enlargement since 1998 F. Hoffmeister describes democracy in light of EU enlargement as follows:

‘Parliamentary democracy means, in essence, that fair and free multiparty elections must be held on a regular basis for the creation of a free parliament do that the people take part in the exercise of public power’<sup>12</sup>

An integral aspect of the EU enlargement process has been the fostering of democracy: democratization. Schmitz and Sell defined democratization as ‘a process of regime change that is directed towards a specific aim: the establishment and stabilization of substantive democracy’.<sup>13</sup>

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<sup>12</sup> F. Hoffmeister, ‘Changing Requirements for Membership’, in Ott, A. and Inglis, K. (eds.), *Handbook on European Enlargement*, (The Hague 2002)

<sup>13</sup> H. Schmitz, K. Sell, ‘International Factors in Processes of Political Democratization: Towards a Theoretical Integration’, in J. Grugel ed., *Democracy Without Borders: Transnationalization and Conditionality in New Democracies* (London and New York). 25

In the EU's democratization arsenal conditionality is overall believed to be the most effective.<sup>14</sup> In order to analyse the effectiveness of conditionality as a tool to enhance democratization, an elaboration on the definition of the concept of conditionality is needed. O. Anastasakis and D. Bechev agree with B. Steunenberg and A. Dimitrova and call conditionality the most powerful instrument of the EU for dealing with the candidate and potential candidate countries in post-communist Europe.<sup>15</sup>

In overall International Relations theory, conditionality is defined as a measure providing an incentive to states to alter their behaviour or policy and is used by international institutions to promote compliance by national governments.<sup>16</sup> In the context of EU enlargement this means that conditionality is used by the EU by setting conditions for the target state to adhere to, as a prerequisite for entering a next stage in the accession process leading towards eventual accession. Within this context B. Steunenberg and A. Dimitrova have come to a definition, more specific to the case of EU enlargement. They see EU conditionality as 'an exchange between the EU and a candidate country in which the EU offers the candidate a (realistic) prospect of EU membership, if the candidate implements a wide range of (EU driven) domestic reform'.<sup>17</sup> T. Freyburg and S. Richter follow the same line in their definition as they see conditionality as an instrument which aims to induce behavioural adaption as an instrumentally and strategically calculated reaction by the target countries' government in response to external incentives.<sup>18</sup>

Although these definitions provide a broad description of the concept of conditionality, there are various forms of conditionality. This paper will exclusively focus on political conditionality. Smith has defined this specific type of conditionality as follows: 'political conditionality entails the linking, by the state or international organization, of perceived benefits to another state, to the fulfilment of conditions relating to the protection of human rights and the advancement of democratic principle'.<sup>19</sup>

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<sup>14</sup> O. Anastasakis, D. Bechev, *EU Conditionality in South East Europe: Bringing Commitment to the Process* (Oxford 2003) 4.

<sup>15</sup> *Ibidem* 4.

<sup>16</sup> T. Börzel, *Matching Deeds to Words, The Principle of Conditionality in the EU's Contractual Relations with the Western Balkan* (Berlin, 2011) 11.

<sup>17</sup> B. Steunenberg, A. Dimitrova, *Compliance in the EU enlargement process: the limits of conditionality* (2007) 3.

<sup>18</sup> T. Freyburg, S. Richter, 'National Identity matters: the limited impact of EU Conditionality in the Western Balkans', *Journal of European Public Policy*, 17:2, 263-281 (2010) 265

<sup>19</sup> K.E. Smith, *The Use of Political Conditionality in the EU's Relations with Third Countries: How Effective?* (Seattle 1997) 4.

### *1.2 Rationalist vs. constructivist explanations*

Within the field of International Relations theory one of the largest theoretical debates is that between rationalism and constructivism. These theories on their own do not provide a comprehensive and elaborated hypothesis on enlargement but must be seen as overarching metatheories, based on a number of social assumptions which can form the foundation of a more enlargement specific theory.<sup>20</sup>

On a basic level, the difference is that rationalism is based on individualism and materialism while constructivism has its foundation in social and ideational ontology. This difference translates into two different logics of action, the rational logic of consequentialism opposed to the constructivist logic of appropriateness. Within the framework of the logic of consequence, the status of institutions and practices is of less importance than the individual, material interests of states. According to this theory, institutions are seen as intervening variables, meddling with the material interests and environment of the actors on the one hand and the collective outcomes on the other. These institutions primarily provide constraints and incentives instead of reasons for action because they alter the cost/benefit calculations.<sup>21</sup>

In contrast to this, constructivists see institutions as identity and interest shaping actors. According to this logic, actors do not deal with institutions as external constraints but rather, institutions provide meaning to rights and obligation. Actors subsequently act by what is institutionally prescribed behaviour out of a normative commitment. In other words, actors act in accordance with international rules because they are believed to be the right rules to follow from a normative perspective.<sup>22</sup>

### *1.3 External incentives model*

In order to evaluate the effectiveness of the EUs external governance by political conditionality, an explanatory model along which the effects are measured is needed. In the light of the Eastern enlargement round F. Schimmelfennig and U. Schimmelfennig have defined a model with which this is possible.

The model outlined by Schimmelfennig and Sedelmeier is the 'external incentives model'. The main proposition of this model is that target states adopt EU rules if the external benefits outweigh the

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<sup>20</sup> F. Schimmelfennig, U. Sedelmeier, 'Theorizing EU enlargement: research focus, hypotheses, and the state of research', *Journal of European Public Policy* 9:4 500-528 (2002), 508,509.

<sup>21</sup> Ibidem.

<sup>22</sup> Ibidem 508-509.

domestic costs. This model is based a rationalist bargaining principle, the actors involved are seen as strategic utility-maximizers, interested in the maximization of their own power and welfare. What follows is a bargaining process in which the actors involved exchange information, threats and promises and the outcome of the process is dependent on their bargaining power.<sup>23</sup>

The analytic starting point of the bargaining process is a so-called domestic status quo. This status quo is the domestic equilibrium and reflects the current political situation and distribution of preferences and bargaining power in the domestic society. EU conditionality sets out to intervene in this domestic equilibrium by introducing new incentives for compliance with EU rules, hereby shifting the balance of the bargaining process. This way, the EU can affect the target government either through intergovernmental bargaining or indirectly through the empowerment of domestic actors. Thus, in short: ‘a state adopts EU rules if the benefits of EU rewards exceed the domestic adoption costs’. The effectiveness of the EU to change the cost-benefit balance depends on three factors. Firstly, determinacy of condition: the effectiveness of conditionality is increased when rules are set as conditions and the more determinate they are. Secondly: the effectiveness of conditionality is increased with the size and speed of rewards. Thirdly, the likelihood of rule adoption increases with the credibility of conditional threats and promises. And lastly, the effectiveness of conditionality decreases with the number of veto-players who benefit from non-compliance.<sup>24</sup>

#### *Determinacy of conditions.*

According to Schimmelfennig and Sedelmeier, EU rules will not be adopted if the EU does not connect these rules as conditions with rewards. Additionally, the determinacy of EU conditionality enhances the level of rule adoption. Determinacy refers to the clarity and formality of a rule. Firstly, determinacy helps the target government to know exactly what is needed to obtain the award. Secondly, determinacy enhances the credibility of conditionality. It shows the target governments that EU rule adoption cannot be avoided. At the same time, however, it also binds the EU. If a condition is determinate it becomes more and more difficult to deny its fulfilment to withhold the award.<sup>25</sup>

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<sup>23</sup> F. Schimmelfennig, U. Sedelmeier, ‘Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe’, *Journal of European Public Policy* 11:4 669-687 (2004) 671.

<sup>24</sup> Ibidem 672-675.

<sup>25</sup> Ibidem 672.

*Size and speed of conditionality.*

Another aspect, influential to conditionality, is the size and speed of conditional rewards. This means that the promise of membership has to be more persuasive than the promise of association or assistance. Also, the influence of the EU should be stronger on potential EU members than on outside states without this perspective. The longer the waiting time to actual payment of the rewards the lower the incentive to comply decisively and quickly. Thus, rule adoption becomes more likely as the moment of reward payment comes closer.<sup>26</sup>

*Credibility of conditionality.*

A third factor of conditionality is connected to the threat of the EU to withhold rewards in case of non-compliance and its promise to deliver the rewards in case of compliance. This means that there has to be a superior bargaining power on the part of the EU and the guarantee of reward reception on the part of the target government.<sup>27</sup>

The EU must be able to withhold the promised reward at low costs to itself and at high costs of the target government. In other words, the EU should be less interested in giving the reward than the target government is in obtaining it. This means that the interdependence of EU and target governments has to be highly asymmetric in favour of the EU. Additionally, the EU also has to be able to pay out the reward at low costs because promises are not credible if it exceeds the EU's capabilities.<sup>28</sup>

Connected to the costs and benefits balance, however, are the so-called sunk costs. The enlargement process is very costly due to long-term negotiations and preparations and the restructuring of EU institutions. Therefore, the longer the pre-accession process takes, the higher the costs of withholding rewards become for the EU. This means that the credibility of promises increase over time as the credibility of threats decreases.<sup>29</sup>

Credibility also depends on the consistency of the payment of rewards. If the EU tends to subordinate conditionality to other political, economic or strategic considerations the target state might either hope to receive the reward without full compliance or conclude that it will not receive its rewards anyway and thus cancel the rule transfer.

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<sup>26</sup> F. Schimmelfennig, U. Sedelmeier, 'Governance by conditionality' 673.

<sup>27</sup> Ibidem.

<sup>28</sup> Ibidem.

<sup>29</sup> Ibidem 673, 674.

Lastly, it is important that cross-conditionality is limited or absent. EU conditionality would be ineffective if the target state has other sources offering comparable benefits at lower implementation costs.<sup>30</sup>

*Veto players and adoption costs.*

Lastly, if non-member states are confronted with determinate and credible conditionality, and they are offered equally beneficial rewards, the domestic costs and their distribution among domestic actors determine whether or not the conditions are accepted or declined. Schimmelfennig and Sedelmeier assume that adoption is always costly to some extent, otherwise rule adoption would have occurred without conditionality. These adoption costs can have various sources; the target government might have to be opportunity costs of forgoing alternative rewards offered by the adoption of rules other than the EU rules. Adoption costs may produce welfare or power costs for private and public actors. However, these adoption costs can be balanced by EU awards. When the rewards are greater than the adoption costs the adoption costs turn into net benefits for all domestic actors.<sup>31</sup> Thus, in order for conditionality to be successful, favourable domestic conditions are needed.

Because of the fact that EU rules have to be implemented by the target government, the effectiveness of conditionality depends on the preferences of the government and the of veto players. These veto players are actors whose agreement is needed to change the status quo. Schweltnuss identifies three types of veto players: the president, who generally has veto powers, parliamentary majority against the government, and the constitutional court. The amount of veto players influences the effectiveness of conditionality.<sup>32</sup>

*1.4 Joining the External Incentives Model and National Identity,*

The external incentives model is relying heavily upon a rationalist cost-benefit calculation. However, according to Freyburg and Richter, this model does not fully explain the variety of effectiveness of conditionality. They argue that, in analysing conditionality, rationalist and constructivist variables are complementary rather than mutually exclusive. Therefore, they present a theory in which the logic of appropriateness, mostly connected with sociological institutionalism, gets embedded in the external incentives model. Schimmelfennig already noted that nationalist tendencies can be of influence on the effectiveness of conditionality as part of the domestic

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<sup>30</sup> F. Schimmelfennig, U. Sedelmeier, 'Governance by conditionality' 674.

<sup>31</sup> Ibidem

<sup>32</sup> Ibidem.

adoption costs. Freyburg and Richter in their turn have set out to conceptualize the effects of national identity within the framework of the external incentives model.<sup>33</sup>

Constructivists see identities as a socially constructed phenomenon instead of primordial unchanging specifics. Because of these characteristics, national identity has to be seen as a constantly contested social fact. According to Freyburg and Richter, this national identity, in turn, constitutes a determinant of the national interest of a given state. It functions as a filter for the perception of problems and potential actions and reactions. National identity, thus, shapes the space in which the government can manoeuvre itself when responding to conditionality criteria. External governance initiatives have to pass an identity test if it is to find solid ground within the government. If conditionality criteria are in conflict with national identity a different reasoning will be applied than if the criteria are considered to be not conflicting with national identity.<sup>34</sup>

Freyburg and Richter have created a filter process to check if national identity has implications for the effectiveness of the EU's political conditionality or not. It determines the logic of social action that governments will follow in response to the conditionality criteria. According to the model Freyburg and Richter have created, cases where EU conditionality is not perceived as conflicting with national identity the government's reaction are in line with the rationalist external incentives model. Thus, in these cases the government will comply with EU conditionality if the benefits of compliance exceed the expected costs of political adaptation. If the adaptation costs exceed the benefits, according to the logic of consequence, states will resist to the conditionality criteria. However, if the conditionality demands are in conflict with national identity, the material incentives for compliance will not affect the action or/and reaction of the government. In this case, the government will stick to the policy it already sees as appropriate action and will not consider going counter to national identity. Therefore, political conditionality will be ineffective when it clashes with national identity and the logic of appropriateness will prevail. In these cases, compliance may still follow if a profound change of national identity occurs.<sup>35</sup> The hypothesis that follows this reasoning states:

‘if a state's national identity contradicts the conditions linked to the benefits of an external incentive, even only partially, the state will not or only inconsistently comply with these conditions-independently of any costs-benefit calculation.’<sup>36</sup>

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<sup>33</sup> T. Freyburg, S. Richter, 'National Identity matters, 266.

<sup>34</sup> Ibidem.

<sup>35</sup> Ibidem.267.

<sup>36</sup> Ibidem 268.



Using this model, difficulties arise in providing empirical proof of the influence of national identity because these matters are by definition subjective in nature. Therefore, two analytical tasks have to be fulfilled in order to provide sufficient evidence for these arguments.

Firstly, it needs to be demonstrated that national identity indeed presented a filter for the perception of problems and thus influenced the formulation of state-interest. In order to do this Freyburg and Richter have formulated various indicators such as public governmental statements of official declarations.

The second analytical task is to show that a government's decision to either comply or resist conditionality criteria is decisively shaped by national identity and, more specifically, by the prescribed appropriate behaviour. This task can be met by performing a congruence test. This is done by examining governmental behaviour and the justifications given for either compliance or non-compliance. If national identity did decisively shape a government's decision on compliance, there should be no evidence of any governmental violations contradicting that very national identity. If governmental violations of national identity do not provoke any severe domestic criticism national identity has weak explanatory power.<sup>37</sup>

### *1.5 Conclusion:*

This chapter has defined the key definitions used in this research and lay down the theoretical framework. The approach of combining the external incentives model with the theory of national identity a more comprehensive model to evaluate the effectiveness of conditionality has been formed. However, the difficulties of this method are clear from the start, a subjective matter such as national identity is hard to analyse but the model as described by Freyburg and Richter tries to overcome these problems.

However, the most important aspect of the approach will be that it will offer a good opportunity to test whether or not the external incentives model is useful in effectively evaluating the conditionality in the Western Balkans. By testing if national identity can indeed form an obstacle that effectively changes the logic of action to from the logic of consequence to a logic of appropriateness the completeness of the external incentives model is tested.

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<sup>37</sup> T. Freyburg, S. Richter, 'National Identity matters' 268.

## Chapter 2: European Union conditionality and the Western Balkans

Now that the methodological framework has been laid out, a historiographic overview of the development of European Union (EU) conditionality in the Western Balkans will be discussed. In order to evaluate the effectiveness of conditionality a clear understanding of the specifics of the accession process is helpful. Thus, this chapter will describe how the EU has shaped its involvement in the region of the Western Balkans. This will be done by providing a historical, step-by-step, description.

### *2.1 The European Union and its early relation with the Western Balkans*

After the fall of the Soviet Union, the Socialist Federal Republic of Yugoslavia started its decomposition. The violence that accompanied this dissolution led to one of the most tragic events in Europe since the end of World War II. This long and violent episode in the backyard of the Europe came at a time in which the European Communities (EC) was close to redefining its organised cooperation with the establishment of the EU.<sup>38</sup>

From the moment the Yugoslav crisis started with the outbreak of war in Slovenia and Croatia in 1991 the EC/EU, was leading the international efforts to de-escalate the war. However, the war came at a time in which the EC was not well prepared to act decisively. The EC had manifested itself as a successful trading bloc but foreign policy and international security were not yet part of its competences. Although the Single European Act of 1989 had established the first legal basis for a shared foreign policy and non-military security policy, the legal foundations for a more far-reaching ‘Common Foreign and Security Policy’ were still on the negotiations table. Later, after the signature of the Maastricht Treaty in 1993 the EU wielded large economic power, only limited political and diplomatic power but had by no means any military power. This lack of instruments to de-escalate violent conflict is one of the main reasons why the EU failed miserably at attaining their objectives during the various wars in the Western Balkans.<sup>39</sup>

However, the nature of the disintegrative violence of the Western Balkans was highly complex. The Western Balkans has been an explosive powder keg due to various social-economic and political complications. For many centuries the Balkans have formed the border area between empires, religions and civilisations and its citizens fought to defend these borders. These numerous wars have caused various migration waves and left the area as an ethnic mixing bowl. This, while

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<sup>38</sup> S. Blockmans, *Tough Love, The European Union's Relations with the Western Balkans* (The Hague 2007) 1

<sup>39</sup> *Ibidem* 2.

various religious and cultural influences left a mixture of Christianity, Orthodox Christianity and Islam with religious violence as one of the consequences.<sup>40</sup>

The wars affected large parts of the surrounding area, either directly or indirectly. Bosnia and Herzegovina (BiH) and Kosovo were at the epicentre of the violence, Croatia, Serbia, Montenegro and Macedonia were the surrounding countries more or less war-affected. Slovenia 'only' saw ten days of war and therefore transition and political consolidation has gone further than in the other countries of the region. The effects of the war in Albania, Romania and Bulgaria became visible later. And lastly, there is an outer ring of EU Member States consisting of Greece, Austria, Hungary, Italy and Germany. These countries have not been able to prevent the influx of refugees and spread of organised crime during and after the war.<sup>41</sup>

The region of the Balkan, thus, is highly interlinked by political, ethnic and historical ties. Recurring ethnic motivated violence in Kosovo and the repeated calls for independence from the Serb Republic (RS) in BiH show that regional instability is still present. The most critical point of friction is Kosovo. If the Kosovar question is mismanaged, it could create a potentially violent domino effect in the entire region. This shows that the process of EU accession of the countries of the Balkan region has been influenced by domestic and interstate sensitivities much more than was the case in any of the previous enlargement rounds.<sup>42</sup>

## 2.2 EU political conditionality

In 1957, six European countries set the big step to what would become today's EU by the signing of the Treaty of Rome. Since that moment, the Union has had six enlargement rounds, the latest integrated Croatia into the Union in 2013. Ever since the birth of the European Coal and Steel Community (ECSC) the importance of democratic structures and respect for human rights has been present. However, these structures were not included in the Treaty text. Still, the accession of Franco-Spain would have been unthinkable.<sup>43</sup> In 1993, the EU saw the need to formalise the procedural enlargement practice and to evaluate its guidelines. To this end, the European Council met in Copenhagen with the aims of simplification, improvement and depoliticisation of the enlargement regulation, creating the Copenhagen Criteria.<sup>44</sup>

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<sup>40</sup> J. Cvijeto, *Yugoslavia's Ruin, the bloody lessons of nationalism* (Oxford 2002) 168.

<sup>41</sup> S. Blockmans, *Tough Love* 3.

<sup>42</sup> *Ibidem* 6.

<sup>43</sup> T. Markler, 'The Power of the Copenhagen Criteria', *CYELP* 2, 343-363 (2006) 345, 346.

<sup>44</sup> D. Kochenov, 'Behind the Copenhagen façade' 2.

This formalization was a reaction to the applications of various Central and Eastern European Countries (CEECs). Although the ‘Copenhagen Criteria’ have become a standard term within EU enlargement, it is very difficult to ascertain what these criteria actually are. This was mainly due to the fact that the 1993 Council merely stated three criteria: political criteria, economic criteria and *acquis* criteria. For the purpose of this research, only the political criteria will be described.

### *Political criteria*

The criteria of democracy and rule of law were not new to the enlargement process. From the moment of the inception of the ECSC, democracy and rule of law had been a constant factor of importance in all accession rounds. References to this demand can be found in the preamble to the draft Treaty Establishing a Constitution for Europe, the preamble to the EC Treaty. Therefore, it is unjustifiable to state that these principles appeared for the first time in the Copenhagen Criteria and were later formalized into the list of requirements for acceding countries in Article 6(1) TUE. The introduction of the reference to political criteria in Article 6(1) TEU has to be seen as the formalization of an existing customary regulation. The fact that the three articles regulating the enlargement of the initial Communities (Art. 98 ECSC, Art. 237 EEC and Art. 205 EURATOM) did not specifically mention the criteria of democracy and rule of law does not mean that these factors were any less important than other principles regulating enlargement.<sup>45</sup>

As far as the hierarchy of the three Copenhagen Criteria is concerned: the criteria were clearly designed to be of equal importance. However, the European Council and European Commission altered this design in order to accommodate the well-established pre-Copenhagen tradition of giving prominence to the state of democracy in applying countries. This change is reflected in several key documents of the Presidency Conclusions of the Luxembourg European Council on 12 and 13 December 1997. Here, the statement was made that compliance with the Copenhagen political criteria was a prerequisite for opening accession negotiations. This statement was reaffirmed in the 1999 Commission’s Composite Paper.<sup>46</sup>

This prioritisation of the political criteria over the economic and *acquis* criteria seems to be in line with the enlargement practice prior to the Copenhagen Criteria. Political criteria had absolute priority over the economic conditions. However, before the Copenhagen Criteria, the political criteria were under minimal scrutiny. The requirement to have an established democracy was purely

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<sup>45</sup> D. Kochenov, ‘Behind the Copenhagen façade’ 3.

<sup>46</sup> *Ibidem* 4.

limited to constitutional guarantees; the real situation of the democratic institutions was not taken into account.<sup>47</sup>

With the creation of the Copenhagen Criteria, the level of scrutiny seems to be increased. The 1998 Composite paper 3 indicates that the requirement to have constitutional guarantees in place has been reinforced by the principle of ‘looking at the way democracy functions in practice, instead of relying on formal descriptions of the political institutions’<sup>48</sup>. This statement alone, however, does not offer a decisive conclusion on whether, and if how, the Copenhagen Criteria changed the character of the assessment of democracy and rule of law. This is mainly due to the fact that, while establishing the criteria, the 1993 Copenhagen European Council did not clarify the exact principles for assessment of the progress towards meeting them nor does it describe the means to measure the conformity with them.<sup>49</sup> The actual text of the Copenhagen political criteria includes several elements. Based on textual interpretation, scholar Dimitri Kochenov outlined four main components: democracy, rule of law, human rights and respect for and protection of minorities.<sup>50</sup>

The way the Copenhagen political criteria are structured in the various Composite papers is highly discontinuous. The text on the Copenhagen criteria of the sub-chapters of the Composite paper of 1998 structures the criteria: democracy and rule of law, human rights and minorities. A year later, the 1999 Composite paper deviates further by adopting a partially state-specific approach focussing on the situation in the most problematic countries and areas. Surprisingly, the general structure used for the assessment of compliance with the Copenhagen criteria is only formulated in the Composite paper of 2000, focusing on the most problematic areas rather than describing the overall status of the candidate states. Without explaining the basis on which the problematic areas have been identified the monitoring of compliance remains questionable.<sup>51</sup>

Adding to the constant changes in the way the papers are structures, the Copenhagen political criteria are given an underwhelming low amount of space in the progress reports. The sub-chapter dealing with the analysis of the Copenhagen political criteria is usually around two pages long; this is in strong contrast to the dozens of pages dedicated to the economic criteria. This divide makes the sincerity of the Commission’s rhetoric about the unquestionable priority and importance of the political criteria doubtful. Of course, the number of pages cannot be used as an indication of the thoroughness of any research. However, the analysis of the state of democracy, rule of law,

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<sup>47</sup> D. Kochenov, ‘Behind the Copenhagen façade’ 4.

<sup>48</sup> Ibidem 2.

<sup>49</sup> Ibidem.

<sup>50</sup> Ibidem 9.

<sup>51</sup> Ibidem 11.

protection of human rights and minorities in not one but several countries squeezed into two pages runs directly against the Commission's principle of full and impartial assessment.<sup>52</sup>

### *2.3 EU's initial approaches in Croatia and BiH: 1992-1996.*

Before the downfall of the Yugoslavia, the country was seen as one of the most advanced communist countries, both economically and in terms of civil society. However, when the situation became precarious in the early 1990s, hopes for a speedy accession into the EU in order to avert the lurking violence soon went up in thin air.<sup>53</sup>

The first step taken by the EU in the region was the formation of the European Commission's Humanitarian Aid Office (ECHO), which was set up in 1992. The efforts undertaken under this programme can be divided into four stages. From 1991 until 1995 ECHO committed 1.18 billion euros in humanitarian aid, mainly by providing food and basic needs. From 1996 until 1998 the programme focused on the reconstruction of infrastructure and institution building of which 71% was focused on Bosnia-Herzegovina. From 1999 until 2000 ECHO allocated 378 million euro to address the needs of the refugees of the Kosovo conflict. Lastly, from 2001 until 2003 ECHO focussed on the refugees and internally displaced persons caused by the armed conflict in the Former Yugoslav Republic of Macedonia between the Albanian minority and the Macedonian majority.<sup>54</sup>

Another programme was OBNOVA, initiated to obtain the following objectives: 'to underpin the reconstruction process, to encourage the return of refugees, reconciliation and regional economic cooperation, and to create the economic and social conditions that would lay the foundation for the development of the recipient countries'. These objectives were to be obtained by 'regional cooperation and good neighbourliness projects, and trans-border projects; rebuilding of infrastructure and other individual or collective facilities damaged in fighting; consolidation of democracy and civil society; return of refugees; and integration or reintegration of refugees, internally displaced persons and former soldiers into working life'.<sup>55</sup>

Lastly, there was the PHARE project, which was originally designed for the Central and Eastern European Countries (CEECs). Since 7 September 1990, Yugoslavia was eligible for PHARE assistance but due to the outbreak of war the program was limited to some emergency activities in Slovenia. When the conflict deescalated PHARE took a longer perspective and focussed more on

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<sup>52</sup> D. Kochenov, 'Behind the Copenhagen façade' 9.

<sup>53</sup> A.F. Tatham, *Enlargement of the European Union* (Alphen aan den Rijn 2009) 316.

<sup>54</sup> *Ibidem* 318.

<sup>55</sup> *Ibidem*.

institution building. However, PHARE was initially just as much concerned with the humanitarian situation as was the ECHO programme and it contributed funds from its own budget to assist ECHO. Funds were also distributed to the OBNOVA programme.<sup>56</sup>

#### *2.4 Regional Approach: 1996-1999*

As was described, the OBNOVA programme focussed on regional cooperation and good neighbourliness. This is where the EU most obviously strayed from the enlargement strategy of the previous CEEC enlargement. During this enlargement round there were some initiatives for regional cooperation and the EU was sympathetic towards this development. However, the EU never fully embraced this cooperation as a core policy component. The focus had always been on individual progress in implementing the various democratic and economic reforms in order to meet the Copenhagen criteria. Although some parts of the EU conditionality required regional cooperation, these conditions were aimed at direct neighbours and not the entire region.<sup>57</sup>

In constructing this approach, focused on regional cooperation, four arguments have been influential. Firstly, the prescriptive argument. This argument is based on a notion that regional interdependence and functional cooperation were proven techniques to establish stability. Because of the experience of its own integration process, the EU was of the opinion that regional cooperation, based on economic forces, material interests and concrete aims could overcome important political obstacles.<sup>58</sup>

The second argument reflects the 'new regionalist' thinking. This strand of academic thinking advocates multilateral cooperation across a wider range of countries and issues within the context of globalisation and widespread transition to democracy and market economy. This development can indeed be seen by looking, for example, at the Visegrad Group of the CEEC enlargement. This group can be seen as a reasonably successful regional initiative, that is in its initial stage, and it was able to build confidence among the countries in Central Europe and enabled them to establish diplomatic ties with the West and Former Soviet Union states. The Balkan region, prone to conflict, posed a serious test of this *new regionalist* thinking.<sup>59</sup>

The third argument was based on the EU's own needs and links to its internal anxiety to incorporate large numbers of former Soviet states into the EU. When faced with this wave of democratisation

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<sup>56</sup> A.F. Tatham, *Enlargement of the European Union* 320.

<sup>57</sup> D. Bechev, 'Carrots, sticks and norms: the EU and regional cooperation in Southeast Europe', *Journal of Southern Europe and the Balkans Online*, 8:1, (2006) 29-30.

<sup>58</sup> O. Anastasakis, V. Bojicic-Dzelilovic, *Balkan Regional Cooperation & European Integration* (London 2002) 16-19.

<sup>59</sup> *Ibidem*.

and market reform the EU had always been afraid that simultaneous incorporation into the EU would affect the unity of the EC/EU. For example, while the EU was negotiating the CEEC accession it was also in the middle of a comprehensive internal transformation with the Monetary Union as ultimate goal. Moreover, the EU has been sceptical towards the Eastern enlargement due to worries about financial consequences. Because of this scepticism the EU has formed sub-groups in enlargement of which the Western Balkans came in last. These struggles have caused the EU to choose a more careful and less far-reaching approach towards the Western Balkans.<sup>60</sup>

Lastly, the fact that the downfall of Yugoslavia had caused the establishment of countries who had a shared history of political, security and economic issues together. The international political environment of these newly created countries was much more interlinked than was the case with any of the CEECs. For example, the constitutional framework set up at the Dayton Peace Agreements for Bosnia and Herzegovina (BiH) was, due to large numbers of Croats and Serbs, highly dependent on the relationship between Sarajevo, Zagreb and Belgrade. Any stabilization effort would also have to include Macedonia and Albania because of the large minority of Albanians present in Yugoslavia's Kosovo and in western Macedonia.<sup>61</sup>

As a result of this new emphasis on regional cooperation, the EU launched the Regional Approach initiative in March 1996. This approach was aimed at those countries in South East Europe that had not yet signed an Association Agreement with the Union. Thus, since Romania and Bulgaria had already signed such an agreement this essentially meant that the Regional Approach focused on Albania and the bulk of Yugoslavia's successor states.<sup>62</sup>

With this approach the EU sought for closer ties between the target states and for them to cooperate among themselves. Thus, with the Regional Approach, the borders of the Western Balkan enlargement group were lined out and regional cooperation became an official element of the accession process.<sup>63</sup> Under the Regional Approach the EU offered financial assistance (under PHARE and OBNOVA), unilateral trade preferences, and trade and cooperation agreements. These rewards were tempered by the sticks of political conditionality.<sup>64</sup>

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<sup>60</sup> O. Anastasakis, V. Bojicic-Dzelilovic, *Balkan Regional Cooperation* 16-19.

<sup>61</sup> D. Bechev, 'Carrots, sticks and norms', 32.

<sup>62</sup> W. Barlett, V. Samardzija, 'The Reconstruction of South East Europe, the Stability Pact and the Role of the EU: an Overview', *MOCT-MOST 2: 245-263* (2000) 252, 253.

<sup>63</sup> O. Anastasakis, 'Towards Regional Cooperation in the Balkans: and Assessment of the EU Approach towards regional cooperation in the Balkans' in: D. Lopandic, *Regional Cooperation in South Eastern Europe, The Effects of Regional Initiatives* (Belgrade 2002) 30-33.

<sup>64</sup> A.F. Tatham, *Enlargement* 163.



The first important aspect of the Regional Approach was that even though it was regional in the sense that most of the principles applied to all the involved countries, an individual approach was still present. The agreements which were to be concluded between the EU and each of the involved countries were to be bilateral in nature. The progressive implementation of the conditions would lead to progressive improvement of relations, subject to a continuous political and economic assessment in which each country would be judged on its own merits. None of the countries involved would be held accountable for the lack of progressive implementation of their regional partners.<sup>65</sup>

Secondly, each country had to undertake serious efforts to adopt interactional measures, mainly in the areas of free movement of goods and persons and developing a common interest. These regional ties had been broken during the conflicts of the 1990's and the EU set out to re-establish them.<sup>66</sup>

Thirdly, in April 1997, the General Affairs Council established the conditional strategy for the Regional Approach. The conditions connected to the Regional Approach were largely in line with the Copenhagen criteria; however, additional conditions were added in order to reflect the needs of the region. The European Council provided a list for the examination of democratic principles, much in line with the Copenhagen political criteria: human rights and the rule of law, respect for and protection of minorities and market economy reform. Democratic principles entailed a representative government and accountable executive, government and public authorities to act in accordance with the constitution and the law, separation of powers, and free and fair elections at reasonable intervals. Human rights and rule of law criteria were freedom of expression, right of assembly and demonstration, right of association, right to privacy, right to property, effective means to redress administrative decisions, access to courts and rights to fair trial, equality before the law and equal protection by the law, freedom from inhuman or degrading treatment and arbitrary arrest. Lastly, respect for and protection of minorities: right to establish and maintain their own educational, cultural and religious institutions, organizations or associations, adequate opportunities for these minorities to use their own language before courts and public authorities, and adequate protection of refugees and displaced persons returning to areas where they represent an ethnic minority.<sup>67</sup>

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<sup>65</sup> 2003rd council meeting 29 April 1997 (08-05-2015) [http://europa.eu/rapid/press-release\\_PRES-97-129\\_en.htm?locale=en](http://europa.eu/rapid/press-release_PRES-97-129_en.htm?locale=en) 29-04-1997.

<sup>66</sup> S. Blockmans, *Tough Love* 244-246.

<sup>67</sup> 2003rd council meeting 29 April 1997 (08-05-2015) [http://europa.eu/rapid/press-release\\_PRES-97-129\\_en.htm?locale=en](http://europa.eu/rapid/press-release_PRES-97-129_en.htm?locale=en) 29-04-1997.

The fulfilment of these conditions would result in three possible rewards: autonomous trade measures, participation in the PHARE programme and Contractual relations. The autonomous trade preferences were linked to ‘the respect of fundamental principles of democracy and human rights and to the readiness of the countries concerned to allow the development of relation between them’. Participation in the PHARE programme was connected to ‘a country’s credible commitment to democratic reforms and progress in compliance with the general standards of human rights and minority rights’. General assistance through the PHARE programme would require ‘compliance with obligations under the peace agreements’. Lastly, for contractual relations, the application of conditionality to contractual relations was to be seen as an evolutionary progress, the start of the negotiations required a lower level of compliance than the conclusion of agreements. Compliance to the conditionality as described above was to be monitored before and after the conclusion of agreements.<sup>68</sup>

The conditionality was thus divided in three sectors: general conditions, applicable to all countries, conditions applicable to the country of the Dayton Peace Agreement (DPA), and country specific conditions. The monitoring mechanism established by the European Commission constituted of a Conditionality Report. Every six months the compliance of the connected countries was evaluated. The first of these reports was published on 3 October 1997.

### *2.5 Stability Pact and Stabilization and Association Process.*

Eventually, it was the 1999 Kosovo crisis that shocked the EU into effectively changing its policy towards the region of the Western Balkans. Two factors were of influence in the changing climate: (1) the war in Kosovo had enhanced the international involvement in South-eastern Europe; and (2) due to the weakening and eventual departure of Croatia’s Franjo Tudjman and Slobodan Milosevic, who were both obstructing pluralist development and regional stability, the ground was being prepared for change. Adding to this, one could argue that by 1999 democratic skills had started to settle into the region’s post-communist political elites and civil society activists.<sup>69</sup>

#### *Stabilisation Pact*

When the NATO airstrikes in Yugoslavia (what would become Serbia) were still underway, the EU foreign ministers launched the Stability Pact (SP) for South Eastern Europe on 17 May 1999. The Council stated that its goal was to draw the region closer to the perspective of full integration

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<sup>68</sup> 2003rd council meeting 29 April 1997 (08-05-2015) [http://europa.eu/rapid/press-release\\_PRES-97-129\\_en.htm?locale=en](http://europa.eu/rapid/press-release_PRES-97-129_en.htm?locale=en) 29-04-1997.

<sup>69</sup> L.J. Cohen, J.R. Lampe, *Embracing Democracy in the Western Balkans* (Washington 2011) 80.

though a contractual relationship, taking into account the individual situation of each country with the clear perspective of EU membership on the basis of the Treaty of Amsterdam and by meeting the Copenhagen criteria.<sup>70</sup>

This was the first time the EU recognised that only full membership of the countries of the Western Balkans could bring forth the necessary changes to achieve positive peace. However, the SP was constructed in a hasty manner, was far from an elaborate strategy, and seemed to be more of a message to say that something had to be done.<sup>71</sup> As for the region of the Western Balkans; they welcomed the SP as it was seen as a new opportunity for closer ties with the EU with the possibility to attract some much needed funds to cope with the burdens of reconstruction. In this way the SP can be seen as the Balkan equivalent of the Marshall Plan for post-war reconstruction and stability in Western Europe.<sup>72</sup>

Even though the SP was created with the aims of post-war reconstruction, regional cooperation has always been at the core of its policy. This way, the SP was an effort to create a unified approach to the whole region, sponsored by a large coalition of donor governments and international organisation such as the OSCE and the Council of Europe. Among these international partners the European Commission presumed a leading role were policy areas was concerned like trade facilitation and liberalisation, infrastructure development and energy policy.<sup>73</sup> Through the SP the EU was able to become more directly and more deeply involved across the entire region.<sup>74</sup>

#### *Stabilization and Association Process*

In the same year as the creation of the SP, 1999, the EU design a new concept, the Stabilization and Association Process (SAP). This approach was meant to coordinate the pre-accession assistance of BiH, Albania, Croatia, Serbia-Montenegro and Macedonia. With this approach, the Regional Approach was reshaped into a new and strengthened approach.<sup>75</sup> The SAP had three central aims: political stability, a swift and smooth transition to a market economy, regional cooperation, promoted by the likelihood of EU membership.<sup>76</sup> The SAP, thus, emphasized stabilization and cooperation among the region's states but at the same time set political, economic and administrative domestic criteria to guide them in meeting the conditionality requirements to

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<sup>70</sup> A.F. Tatham, *Enlargement* 164.

<sup>71</sup> D. Bechev, 'Carrots, sticks and norms' 34.

<sup>72</sup> Ibidem

<sup>73</sup> Ibidem

<sup>74</sup> L.J. Cohen, J.R. Lampe, *Embracing Democracy* 81.

<sup>75</sup> Ibidem.

<sup>76</sup> G. Stafaj, 'From Rags to Riches: Croatia and Albania's EU Accession Process Through the Copenhagen Criteria and Conditionality rags to riches', *37 Fordham Int'l L.J.* 1683 (2014) 1696.

become full EU membership candidates. By offering this mixed approach, combining bilateral and multilateral relations with each country, the EU set out to encourage overall cooperation in the region in order to oblige them to create similar relations between themselves as those that are in place in the Union itself. On the outset, this approach seemed fresh and promising, however the balance between bilateral and multilateral treatment proved hard to maintain.<sup>77</sup>

The SAP was based on the idea that each Western Balkan state is able to join the EU on its own merits but progress towards accession needs to be accompanied by regional reconciliation and cooperation. Progress is dependent on, most notably, cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY) and on a sufficient degree of compliance with general and country-specific conditions.<sup>78</sup>

In practical terms, there are two phases in the SAP. Firstly, the general economic, social, legal and political situation of the country is assessed. This phase is initiated when a country expresses its interest in the establishment and institutionalisation of relations with the EU. This is done by the signing of a Stabilization and Association Agreement (SAA) with the Union.<sup>79</sup> This contractual relation is bilaterally available for all the countries involved and constitutes more advanced ties between the given country and the EU. With the signing of an SAA EU membership is no longer merely based on a political commitment but on a contractual tie. The SAAs are based on Article 310 TEC, which was also the basis on which the Europe Agreements (EAs) with the CEECs were concluded. This close relation with the EAs can be recognized in the content of the SAAs, even though there are some new elements, respecting the unique situation of the Western Balkans Countries. The Commission stated that the conclusion of SAAs would provide an appropriate alternative to the EAs, which were regarded as leading to membership. The largest difference between the SAA and the EAs is that the EAs had far less ambitious goals.<sup>80</sup>

Another part of the SAPs components was the CARDS programme package which offered 4.9 billion euro reserved for institution building, infrastructure and economic development.<sup>81</sup> By offering a financial incentive, the EU hoped to speed up the accession process. As countries made progress towards EU membership assistance was increasingly provided in order to support the

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<sup>77</sup> L.J. Cohen, J.R. Lampe, *Embracing Democracy* 81.

<sup>78</sup> F. Trauner, 'From membership conditionality to policy conditionality: EU external governance in South Eastern Europe', *Journal of European Public Policy*, 16:5, 774-790 (2009), 779.

<sup>79</sup> S. Blockmans, *Tough Love* 251.

<sup>80</sup> *Ibidem* 254.

<sup>81</sup> D. Bechev, 'Carrots, sticks' 36.

necessary reforms and institution-building necessary to implement and enforce the obligations tied to the SAAs.<sup>82</sup>

One year after the initiation of the SAP the 2000 European Council of Feira confirmed the qualification of the SAP countries as potential candidates. Hereby the EU reaffirmed their commitment to the region and enhanced its influence in it. This message was the most important development, the SAP was a good step forward but many of the countries of the Western Balkans had already entered the EU market duty free, more important was the political message that those countries did not have to fear to be left out of the enlargement process.<sup>83</sup>

Three years after the Council of Feira, the June 2003 Thessaloniki Council stated that the EU once again reaffirmed its support to the EU perspective of the Western Balkan countries. The future of the Balkans was unquestionably within the Union. The preparation for integration into European Structures and eventually EU membership was the big challenge ahead. The Council also acknowledged that the SAP would remain the framework for the western Balkan countries' path to Europe. Despite the importance of regional cooperation, each country would be evaluated on its own abilities to meet the Copenhagen criteria and the conditions set for the SAP.<sup>84</sup> However in order to use the SAP as an anchor for reforms in the Western Balkans, strengthening and enriching it with elements from the enlargement process, as was used in the CEEC enlargement round, was needed so that it would be better equipped to meet the challenges. This was done by the introduction of the European Partnership (EP) in order to tie the priority areas, identified by the annual report, more closely to plans for action, both in the short and medium term. This instrument was meant to enhance the clarity of conditionality and to propel the Western Balkans countries towards accession.<sup>85</sup>

## 2.6 Conclusion:

This chapter has shown that, before the CEEC enlargement round, the EU set out to formalise its accession process. Therefore, the so-called Copenhagen Criteria were created. Relevant for this research are the political criteria: respect the principles of liberty, democracy, human rights and fundamental freedoms, and the rule of law. Even though the Copenhagen Criteria were constructed within the context of the CEEC enlargement, they were also put to use in the Western Balkans.

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<sup>82</sup> S. Blockmans, *Tough Love* 269.

<sup>83</sup> D. Bechev, 'Carrots, sticks, 81.

<sup>84</sup> A.F. Tatham, *Enlargement* 166.

<sup>85</sup> C. Gordon, 'The Stabilization and Association Process in the Western Balkans: an effective instrument of Post-conflict management?', *Ethnopolitics*, 8:3-4, 325-340 (2009) 329.

The Yugoslav wars showed the EU that stability in its own backyard was important. This led to the initiative of the Regional Approach. The aim of this approach was to bring the countries of the Western Balkans closer together after the destructive wars in Yugoslavia. In order to receive autonomous trade measures, PHARE participation, and contractual relations with the EU, the countries involved in the regional approach had to adhere to conditions. These conditions could be seen as an upgraded version of the Copenhagen criteria, with additional criteria to deal with the specifics of the region.

After the war in Kosovo the EU clearly stepped up its game by creating a new approach. In 2003 this approach would get its final form in the SAP. This approach set out to fill up the gaps of the inefficient Regional Approach. The main instrument of this approach was the SAA, a contractual relationship between the candidate state and the EU.

### **Chapter 3: Conditionality in Croatia:**

After describing the characteristics of the various European Union (EU) initiatives as they were put up over the course of the last 19 years, the workings of these initiatives in Croatia will now be described. In the case of Croatia, a historical overview of its path to accession from 1996 until 2013 will be given. Guiding publications will be the EUs reports on Croatia's progress, first within the context of the Regional Approach and later in the Stabilization and Association Process (SAP).

#### *3.1 Regional Approach in Croatia.*

In the case of Croatia, conditionality connected to the Regional Approach was focussed on the improvement of democratic principles, human rights and rule of law, respect for and protection of minorities, market economy reform, regional cooperation and compliance with obligations under the Dayton/Paris.<sup>86</sup>

On 3 October 1997, the first Conditionality Report was published covering the level of compliance of the target countries of the Regional Approach. This first report was all but positive about the developments in Croatia.<sup>87</sup>

In the field of democratic principles, the overwhelming dominance of the Croatian Democratic Union (HDZ), led by Franjo Tudjman, in all spheres of Croatian life and its concentration of power was underlined. The dominance of the HDZ had a negative effect on the representativeness of the government and accountability of the executive. Additionally, the authorities did not act in accordance with the constitution and nor was there any respect for the separation of powers. Drastic reforms had to change the following aspects: voting rights were based on an ethnic basis, seats were reserved for out of the country voters while ethnic minorities in Croatia had problems with exercising their own citizenship and voting rights, the partial role of the media in the electoral process, and the lack of multi-party representation.<sup>88</sup>

In the field of human rights and rule of law, the Commission noted that there had been some minor improvements but the overall human rights record had remained unchanged. Human rights were broadly present in the Croatian constitution but the implementation of these rights had been highly selective. Most importantly, the key provisions of the 1991 Constitutional Law on Human Rights and Freedoms remained suspended, even though the adoption of it was a precondition of

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<sup>86</sup> 'Commission Staff Working Paper on compliance with the conditions set out in the Council Conclusions of 29 April 1997' (09-06-2015) [http://ec.europa.eu/enlargement/pdf/key\\_documents/9710\\_report\\_a\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/9710_report_a_en.pdf) (3-10-1997), 8-13.

<sup>87</sup> Ibidem.

<sup>88</sup> Ibidem 8.

Croatia's international recognition. The government had not kept its promise made to the Council of Europe in 1996 to lift these suspensions.<sup>89</sup>

Minority rights were technically protected by the Constitution and various international commitments. However, due to the suspension of several provisions, the political representation and social and cultural rights of minorities, most notably the Croatian Serb minority, were not respected.<sup>90</sup>

The second Conditionality Report on Croatia did not show any progress in the level of compliance. Instead, the Report even warned that the situation had worsened and that the Council was now seriously considering the removal of the autonomous trade measures. Croatia had failed to translate its wish for integration into EU structures into progress in meeting the EU conditionality criteria. Thus, Croatia was moving further away from meeting EU conditionality. This was mainly due to the reverse development of ethnic reconciliation and refugee return. Unless the initiatives to improve the confidence of Serb minorities were taken seriously, the Council saw the removal of Croatia's autonomous trade preferences as unavoidable.<sup>91</sup>

In October 1998 the third Conditionality Report on Croatia was slightly more positive. Finally, some progress in different areas had been realised but these efforts were uneven and the discrepancy between statements of intent and practical implementation remained. As for democratisation, human rights and electoral reform, little or no progress was made. Also the problems concerning minority treatment and the independence of the judiciary remained unchanged. However, the adoption of a refugee return programme was seen as an encouraging sign, despite the fact that the return progress remained slow. As far as regional cooperation was concerned, Croatia had made steps towards improvement but it was still lagging behind in following up on its Dayton/Paris obligations. For the time being, Croatia would continue to benefit from the autonomous trade preferences but assistance under the PHARE programme and a cooperation agreement was still far away.<sup>92</sup>

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<sup>89</sup> 'Commission Staff Working Paper on compliance with the conditions set out in the Council Conclusions of 29 April 1997' (09-06-2015) [http://ec.europa.eu/enlargement/pdf/key\\_documents/9710\\_report\\_a\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/9710_report_a_en.pdf) (3-10-1997), 8.

<sup>90</sup> Ibidem 9

<sup>91</sup> 'Commission Staff Working Paper on compliance with the conditions set out in the Council Conclusions of 29 April 1997, in the framework of the Regional Approach to the countries of South-Eastern Europe'. (09-06-2015) [http://ec.europa.eu/enlargement/pdf/enlargement\\_process/accession\\_process/how\\_does\\_a\\_country\\_join\\_the\\_eu/sap/990517\\_sec\\_714\\_en.pdf](http://ec.europa.eu/enlargement/pdf/enlargement_process/accession_process/how_does_a_country_join_the_eu/sap/990517_sec_714_en.pdf) (27 April 1998).

<sup>92</sup> 'Commission Staff Working Paper Regional Approach to the countries of South-Eastern Europe: Compliance with the conditions in the Council Conclusions of 29 April 1997' (09-06-2015) [http://ec.europa.eu/enlargement/pdf/enlargement\\_process/accession\\_process/how\\_does\\_a\\_country\\_join\\_the\\_eu/sap/981019\\_sec\\_1727\\_en.pdf](http://ec.europa.eu/enlargement/pdf/enlargement_process/accession_process/how_does_a_country_join_the_eu/sap/981019_sec_1727_en.pdf) (19-10-1998).



The spring report of 1999 concluded that the situation of one-party-dominance of HDZ had seen a slight improvement due to the resignation of several parliamentary party positions. However, significant progress in key areas was still badly needed. Especially the dominance of president Tudjman and the ruling party had a negative effect on the separation of powers. A brighter picture was given in the domain of human rights, the commission concluded that Croatia was now starting to take a 'more cooperative approach'. However, further improvements were needed as the adopted international legislation was practiced selectively

### *3.2 Stabilization and Association Process in Croatia*

Although Croatia did not show any concrete progress within the framework of the Regional Approach, it was still the most developed country of the region in terms of economy and institutional framework. The results of the 2000 elections proved crucial for Croatia's jump forward on the political front, constituting it as the frontrunner of the accession process of the region.

During the 1990's the main political party in Croatia was the HDZ, a highly nationalistic party under the leadership of Tudjman. As aforementioned, during the Regional Approach political progress was scarce due to the power of the HDZ and its President. The elections of 2000, the first free and democratic elections, instituted the reform-committed Račan government. This made for an incredible change to this situation.<sup>93</sup> From the moment the Račan government came to power, Croatia really started 'their return to Europe'.<sup>95</sup> Due to this regime change the Croatian constitution could be amended, limiting the powers of the president and the abolition of the Second Chamber of Parliament. Because of the elections and subsequent constitutional amendment, many see the year 2000 as the start of Croatia's true democratic political life.<sup>96</sup> The EU was also more than content with Croatia's political turn and rewarded these developments with the start of Stabilization and Association Agreement (SAA) negotiations in November of 2000. Thus, immediately after the Zagreb Summit the EU pulled Croatia closer. The negotiations of the SAA went smoothly and only eleven months later, the SAA was ready to be signed in October 2001.<sup>97</sup>

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<sup>93</sup> R. Mihaila, 'Europeanisation faces Balkanisation: Political conditionality and democratisation – Croatia and Macedonia in comparative perspective', *Journal on European Perspectives of the Western Balkans*, 4:1 (2012) 22.

<sup>94</sup> A. Konitzer, 'Speaking European: Conditionality, Public Attitudes and Pro-European Party Rhetoric in the Western Balkans', *Europe-Asia Studies*, 63:10, 1685-1888 (2011) 1859-1860.

<sup>95</sup> G. Stafaj, 'From Rags to Riches 1683.

<sup>96</sup> T. Cerruti, 'The Political Criteria for Accession to the EU in the Experience of Croatia', *European Public Law* 20:4 771-798 (2014) 784.

<sup>97</sup> R. Mihaila, 'Europeanisation faces Balkanisation 22.

The signature of the agreement was seen by the EU as proof of the ‘steadily improving relationship between Croatia and the EU’.<sup>98</sup>

For the Commission, the signing of the SAA also gave reason to pat itself on the back on the effectiveness of the SAP:

‘The process has acted as a catalyst for democratic change. All of the countries of the region have embarked on strengthening democratic process and institutions, respect for the rule of law and human rights. There are obvious weaknesses, but the commitment is there and is in part attributable to the countries having been embraced in the Stabilisation and Association process’.<sup>99</sup>

Despite the positive notes, the Commission also had some proposed improvements for the SAP: ‘the process needs to be tailored to the needs and specific conditions of the individual countries and that the proper balance needs to be struck between stabilisation and association’<sup>100</sup>

As for Croatia, the most pressing issues concerned its cooperation with the International Criminal tribunal for the former Yugoslavia (ICTY), judicial reform, structural reforms to combat corruption and to ensure respect for human rights, and lastly efforts had to be focused on overcoming nationalistic tensions in connection to the return process of the displaced population. The message connected to the issues from the EU sounded clear: ‘EU membership is an objective if there is a continuation of the reform programme’ ‘there will be no shortcuts to accession’.<sup>101</sup>

As for the nature of conditionality was concerned, since the moment that Croatia started its Stabilization and Association Process (SAP) it was clear that the EU would apply a rigorous conditionality regime. In a lot of areas, the criteria set by the Commission were stricter than those actually applied within the Union. For instance, the protection of fundamental rights was to be of a higher standard than in some of the EU countries.<sup>102</sup>

### *ICTY cooperation*

Soon after the signing of its SAA Croatia officially applied for membership to the EU in February 2003 and with the acceptance of the application the EU granted Croatia candidate status in June

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<sup>98</sup> ‘Report from the Commission The Stabilisation and Association process for South East Europe First Annual Report’ (11-06-2015) <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52002DC0163&from=EN> (03-04-2002) 19.

<sup>99</sup> Ibidem 8.

<sup>100</sup> The Stabilisation and Association process for South East Europe First Annual Report 8

<sup>101</sup> R. Mihaila, ‘Europeanisation faces Balkanisation, 23

<sup>102</sup> T. Cerruti, ‘The Political Criteria’ 787.

2004. In December 2004 the European Council decided that accession negotiations with Croatia would be opened in March 2005.<sup>103</sup> However, although the EU granted candidate status, accession negotiations could not be opened due to insufficient cooperation with the ICTY. In particular, the EU demanded the Croatian government to assist the EU in arresting of the suspected war criminal General Ante Gotovina. The fact that Croatia was on the verge of starting the accession negotiations combined with the resolve of the EU to sanction non-compliance made the situation an end-game of highly credible political conditionality. The postponement of the negotiations until Croatia showed full cooperation showed that the EU was serious about this precondition.<sup>104</sup>

In 2001, a survey had indicated that only 11% of the respondents was in favour of full and unconditional adherence to the demands of the EU, 59% supported cooperation but only on the condition that the ICTY proceeding would be treated as an individual matter and 25% of the respondents were of the opinion that no generals or politicians should be persecuted.<sup>105</sup>

In addition, since 2002, Croatia was governed by a minority coalition under the leadership of the HDZ. Between 2000 and 2003 the HDZ, under party leader Sanader, had distanced itself from the party's nationalist hardliners and positioned itself as a pro-EU party.<sup>106</sup> Sanader underlined his party's commitment to the accession process by repeatedly expressing his party's commitment to meet the EU's demands.<sup>107</sup> However, the dilemma here was that cooperation with the ICTY and the EU on war crimes remained a sensitive subject, both within the HDZ as well as in the Croatian community. Thus, Croatia's new president Sanader faced a dilemma: a significant proportion of HDZ's supporters was opposed to the arrest of but he also knew that non-compliance would cause the United Kingdom and the Netherlands to veto the ratification of the SAA, blocking the start of the negotiations.<sup>108</sup> The resilience of the EU to give leeway eventually persuaded the government to comply with the unpopular demand because the political costs of non-compliance were much higher than the domestic political costs of arresting . This resulted in October 2005 in the capture of Gotovina in Tenerife and he was later extradited to The Hague. The fact that Gotovina was arrested outside of Croatia, in Tenerife, limited the domestic pressure and costs significantly.<sup>109</sup>

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<sup>103</sup> F. Schimmelfennig, 'EU political accession conditionality after the 2004 enlargement: consistency and effectiveness', *Journal of European Public Policy*, 15:6, 618-937 (2011) 928.

<sup>104</sup> F. Schimmelfennig, 'EU political accession conditionality', 928.

<sup>105</sup> A. Konitzer, 'Speaking European: 1864-1863.

<sup>106</sup> F. Schimmelfennig, 'EU political accession conditionality' 929.

<sup>107</sup> R. Mihaila, 'Europeanisation faces Balkanisation' 22.

<sup>108</sup> A. Konitzer, 'Speaking European: 1867.

<sup>109</sup> F. Schimmelfennig, 'EU political accession conditionality' 929.

With Croatia finally cooperating with the ICTY and the subsequent entry into force of the SAA, the accession negotiations could start. These negotiations went relatively smooth and without many large obstacles. The Commission's 2006 Enlargement Strategy had a significant impact on the effectiveness of EU conditionality through the introduction of the use of benchmarks. These benchmarks were measurable targets for the candidate states to fulfil and which were linked to key element of the various negotiation chapters. Another consequence of this new tactic of benchmarking was that it enhanced the role of the different Member States because it was up the capitals to approve evaluate the benchmarks.<sup>110</sup> This was most dramatically demonstrating at the end of 2008, when the accession process came to a complete standstill, once again. This time, however, it was a Member State of the EU, Slovenia, blocking the negotiations.<sup>111</sup>

### *Piran Bay*

Slovenia was unable to see eye to eye with some outstanding issues regarding the break-up of Yugoslavia. The most stringent matter was a dispute on the maritime border in the Gulf of Piran. This area is located in the northernmost part of the Adriatic Sea within the Trieste Bay. The Bay is locked between the peninsula of Savidrija and the peninsula of the small town of Piran. The eastern end of the bay was part to the Slovenian coast but was under Croatian sovereign jurisdiction.<sup>112</sup>

The origin of this dispute can be traced back to the declaration of independence of both countries. The creation of these new states in June 1991 and their international recognition immediately asked for clear demarcations of the borders between them. The problem with the Piran Bay area was that in Yugoslavia the sea borders between republics were never determined and thus were non-existent.

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The dispute over the Bay was fought by using legal terms and arguments. However, the true nature of the dispute was nationalistic. After the bloody wars of the 90s established the borders of Croatia the Croats were reluctant to hand over land.<sup>114</sup> Slovenia, on the other hand, was of the opinion that Croatia's reluctance to resolve the matter, in a way as to satisfy Slovenia, was a matter of non-compliance to the political criteria and therefore the process was blocked.<sup>115</sup>

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<sup>110</sup> H. Butkovic, V. Samaradzija, 'Challenge of continued EU enlargement to the Western Balkans-Croatia's experience', *Poznan University of Economics Review*, 14:4 (2014) 94.

<sup>111</sup> G. Stafaj, 'From Rags to Riches' 1711.

<sup>112</sup> M. Avbelj, J.L. Cernic, *The Conundrum of the Piran Bay: Slovenia V. Croatia-the Case of Maritime Delimitation* (2009), 2

<sup>113</sup> *Ibidem*, 9-10

<sup>114</sup> *Ibidem*.

<sup>115</sup> M. Avbelj, J.L. Cernic, *The Conundrum of the Piran Bay*, 9-10.

At first, the EU attempted to play a mediator role, however, this attempt proved futile. After this initial failure to mediate, the EU invited Slovenia and Croatia to settle the matter. Eventually it took until the second half of 2009 to resolve the matter. When Croatia's new Prime Minister, Jadranka Koser, took office in Zagreb, the two countries were able to agree that they would submit the case to an arbitral tribunal that eventually decided on a final ruling on the matter.<sup>116</sup> This agreement resolved the matter so far as that Slovenia did no longer block Croatia's accession process. However, up until this day the dispute is still not settled, the proceedings are still underway.

For some scholars, this example of a Member State effectively blocking the accession negotiations is ground to argue that the Council has replaced the role of the Commission as the main driver of the enlargement policy, making the enlargement process much more unpredictable and time-consuming.<sup>117</sup>

Eventually, after six years, the accession negotiations were successfully completed in June 2011, leading to the signing of the Accession Treaty on the 9<sup>th</sup> of December 2011. In January 2012, the Croatian voters also approved the accession via referendum. Finally, on 1 July 2013 Croatia acceded into the EU, this date had been set at the closing of the accession negotiations.<sup>118</sup>

### *3.3 Conclusion.*

This chapter has shown that the Regional Approach in Croatia did not result into the results the EU was hoping for. The various conditionality reports showed that only minor progress could be identified but overall the Croatia remained at a standstill.

This all changed along with the governmental change in 2000. During that year's elections the nationalistic HDZ lost power to the reform-oriented Račan government. This government started Croatia's return to Europe. After this progress went relatively fast in Croatia with the signature of the SAA in October 2001. However, when Croatia officially applied for membership in 2003 and the accession negotiations were about to start in March 2005 a serious problem arose. In order to start the negotiations, the EU demanded the arrest of the Croatian war-criminal General Ante Gotovina. In the end the resilience of the EU proved sufficient and in October 2005 was arrested so the accession negotiations could finally start.

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<sup>116</sup> T. Cerruti, 'The Political Criteria' 781-782.

<sup>117</sup> H. Butkovic, V. Samaradzija, 'Challenge of continued EU enlargement to the Western Balkans-Croatia's experience', *Poznan University of Economics Review*, 14:4 (2014) 99.

<sup>118</sup> Ibidem.

The second key-moment in the accession process of Croatia was the border dispute between Croatia and Slovenia about Piran Bay. As was described above, the ground for this dispute lay in the absence of clear border demarcations between Slovenia and Croatia. This was a clear example of an EU member state blocking the accession process. However, in the second half of 2009 the dispute was settled and the accession process of Croatia was back on track. After the dispute on Piran Bay the negotiations went smoothly and Croatia was able to successfully complete the accession negotiations and signed the accession Treaty in December 2011 and accessed into the EU in July 2013.

## Chapter 4: Conditionality in Bosnia and Herzegovina.

After describing the accession process of Croatia, the same will now be done for the accession process of Bosnia and Herzegovina (BiH). However, before this can be done the political situation in BiH needs to be put out. Due to its complex nature and large impact on rule adoption the constitutional framework of BiH, as constituted by the Dayton Peace Agreements, needs to be clearly pictured.

### 4.1 Constitutional framework of Bosnia and Herzegovina

The complex nature of Bosnia and Herzegovina's (BiH) constitution is mainly caused by its demographic situation. Of all the countries of former Yugoslavia, BiH was the most ethnic heterogeneous. Before the outbreak of the war, the last population census showed that BiH consisted of 43.47% Muslims by nationality (Bosniaks), 31.21% Serbs and 17.38% Croats. Due to this demographic situation the war in BiH was relatively more violent than in Croatia, where the population consisted of mostly Croats.<sup>119</sup>

Then, after the internationally mediated end of the war, BiH was 'given' its own constitution as part of the Dayton Peace Agreement (DPA), in Annex IV. This constitution was meant as an interim solution to stop the fighting and revive political life in BiH. This revival did indeed take place in the short term, however in the long-term the Dayton Constitution has had far-reaching consequences for the workings of the state.<sup>120</sup>

Some have described the Dayton constitution as one of the most complicated and wasteful systems of government ever devised. The first reason for this is its weak and meagre central government (BiH State). Below state level, BiH is divided into two semi-state ethno-nationalist entities: the Federation of Bosnia-Herzegovina (FBiH) and the Serb Republic (RS). Within the FBiH there are 10 cantons, three of which are dominated by Bosnian Croats, five by Bosniaks and two are contested. Finally, to make things even more complicated, there are 142 local municipalities. All these different levels of governance have left BiH administratively weak at the centre and politically divided along ethnonational lines.<sup>121</sup>

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<sup>119</sup> Z. Meskic, N. Pivic, 'Federalism in Bosnia and Herzegovina' in: *Vienna Journal on International Constitutional Law* vol 5. 4/2011 (2011 Vienna) 598.

<sup>120</sup> D. Lajh, A. Krasovec, 'Post-Yugoslav Region between Democratisation and Europeanisation of Party Politics: Experiences from Slovenia and Bosnia-Herzegovina', *Politics in Central Europe* 3 (2007) 82.

<sup>121</sup> G.O. Tuathail, J. O'Loughlin, D. Djipa, 'Bosnia-Herzegovina Ten Years after Dayton: Constitutional Change and Public Opinion', *Eurasian Geography and Economics* (2006) 62.

Additionally, DPA has two other weak aspects that are having a critical, negative impact on the already difficult process of democratization. Firstly, the Dayton agreement has given international actors, unaccountable to the Bosnian people, the ability to shape and reshape the agenda of post-war transition.<sup>122</sup> The most intrusive power was laid in the hands of the Office of the High Representative (OHR) to overcome the weakness of the central government and to oversee the civilian implementation of the DPA. This increased authority, for instance, entailed the right to remove elected officials from office if they are ‘obstructing the will of the people’.<sup>123</sup> Secondly, the DPA has kept the ethnic division in place, of which all groups have several dangerous points of discontent.<sup>124</sup>

#### *4.2 Regional Approach in Bosnia and Herzegovina.*

Despite the unique constitutional situation, BiH was grouped within the framework of the Regional Approach by the Councils Conclusion of 29 April 1997, along with Croatia and the Federal Republic of Yugoslavia (later known as Serbia). The first progress paper of the Regional Approach was not all too positive. Both entities were failing to comply with the ‘rules of the road’ as set out by the Dayton Agreements.

As for the democratic principles, the report concluded that there was a severe hesitance of the leaders of the three communities to commit to democratic co-existence with the other.<sup>125</sup> The overall conclusion of the paper was only slightly positive due to the return of refugees, albeit this was very slow. The toughest conclusion was that cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY) was completely unsatisfactory, especially in the RS. The overall assessment, thus, was that the progress was painstakingly slow, especially in the RS.<sup>126</sup> Interestingly, the DPA provisions take up the most space in the assessment of the Commission. According to Börzel, this is an indication that, at that point, the basic preconditions for complying with actual European Union (EU) conditions were non-existing.<sup>127</sup>

Eight months later, in the spring of 1998, the next report on BiHs progress did not show any substantial improvements. According to the Commission, ethnic ties to neighbouring countries

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<sup>122</sup> G. Venneri, *Modelling States from Brussels? A Critical Assessment of the EU-Driven Statebuilding of Bosnia and Herzegovina* (2007) 24.

<sup>123</sup> L.J. Cohen, J.R. Lampe, *Embracing Democracy* 78.

<sup>124</sup> G. Venneri, *Modelling States from Brussels?* 24.

<sup>125</sup> Commission Staff Working Paper on compliance with the conditions set out in the Council Conclusions of 29 April 1997.

<sup>126</sup> *Ibidem*.

<sup>127</sup> T. Börzel, *Matching Deeds to Words, The Principle of Conditionality in the EU's Contractual Relations with the Western Balkan* (Berlin, 2011) 11.



were a big matter of concern because it not only hampered progress regarding regional cooperation but also severely limited effective refugees and minorities returning to the area. What is striking to note about this second report is that the Commission used much stronger language when it comes to the implementation of the conditions. The Commission included a list of eleven priority areas along with implementation deadlines.

The third report, again, showed many similarities with the previous two. Especially minority protection did not improve, mostly due to a lack of political will to promote minority return.<sup>128</sup>

During the summer of 1999 the situation worsened and the progress made thus far was at risk. This situation was in large parts created by High Commissioner Poplasen himself by the dismissal of the RS president. This, in combination with the NATO airstrikes on Serbia in the context of the Kosovo war, created an atmosphere of rising tension and a widening divide between hard-core nationalists and moderates.<sup>129</sup> In the FBiH, the situation was also worsening due to internal tensions. Bosnian Croat representatives had withdrawn from joint bodies at State and entity level as a reaction to the killing of Deputy Interior Minister Leutar. Due to the fact that BiH did not fulfil any of the conditions by 1999, the Commission repeated its strong conviction and denied any possibility of bilateral agreements between the EU and BiH. This denial shows a strict application of conditionality on the part of the Commission, negotiations could not and would not be opened before the relevant conditions had been fulfilled.<sup>130</sup>

The situation did improve a little in the following period, from April 1999 to January 2000, but the Commission still concluded that this progress was unsatisfactory in both the RS and the FBiH. Another important conclusion of the Commission at that time was that there was a clear link between international pressure or direct action of the OHR and progress made.<sup>131</sup> This causality indicated that there was little real political support for implementing the conditions as set out by the EU and the DPA, and showcased severe cases of deadlock in the respective parliaments or executive bodies. These limiting conditions made it so that at the end of 2000, and therefore the

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<sup>128</sup> 'Commission Staff Working Paper Regional Approach to the countries of South-Eastern Europe: Compliance with the conditions in the Council Conclusions of 29 April 1997' (09-06-2015) [http://ec.europa.eu/enlargement/pdf/enlargement\\_process/accession\\_process/how\\_does\\_a\\_country\\_join\\_the\\_eu/sap/981019\\_sec\\_1727\\_en.pdf](http://ec.europa.eu/enlargement/pdf/enlargement_process/accession_process/how_does_a_country_join_the_eu/sap/981019_sec_1727_en.pdf) (19-10-1998) 4.

<sup>129</sup> 'Commission Staff Working Paper on compliance with the conditions set out in the Council Conclusions of 29 April 1997, in the framework of the Regional Approach to the countries of South-Eastern Europe' (11-06-2015) [http://ec.europa.eu/enlargement/pdf/enlargement\\_process/accession\\_process/how\\_does\\_a\\_country\\_join\\_the\\_eu/sap/990517\\_sec\\_714\\_en.pdf](http://ec.europa.eu/enlargement/pdf/enlargement_process/accession_process/how_does_a_country_join_the_eu/sap/990517_sec_714_en.pdf) (17-05-1999) 2.

<sup>130</sup> Ibidem 3.

<sup>131</sup> Ibidem.

end of the Regional Approach, only one condition was fulfilled: the framework that allowed for a competitive banking sector.<sup>132</sup>

#### *4.3 Stabilization and Association Process in Bosnia and Herzegovina.*

As the aforementioned shows, there is a lot of academic criticism on the structure of the Dayton constitution in BiH. Ever since its first progress report on the Stabilization and Association Process (SAP) on 3 April 1997, the EU has also been highly sceptical on the effectiveness and sustainability of BiH's constitution. The DPA framework had worked to tackle the most pressing problems at hand at the time of its creation, widespread violence stopped and large amounts of refugees had returned to their home towns. In terms of democratic institutions and the build-up of inter-national trust among the ethnic groups, the real work was still ahead at that time.<sup>133</sup>

Despite the many challenges that were laying ahead, the following Progress Report noted positive change in BiH. In October 2002 the general elections had shown that BiH adhered to 'basic democratic principles' and the implementation of the 2000 BiH Constitutional Court decision on the constituent peoples 'effectively changed the dynamics of politics'. These positive remarks, however, are followed by the side-note that much of this progress was made by extensive pressure from the High Representative, again limiting the sense of ownership of the process by the Bosnian people.<sup>134</sup>

This fairly positive report was followed up in November 2003 by the publication of a Feasibility Study by the European Commission in which BiH's readiness to open SAA negotiations was confirmed, on the condition that BiH continued to make significant progress, especially regarding ICTY cooperation, democracy and human rights.<sup>135</sup> This sudden impulse to the process came in the same month as the Thessaloniki Summit, proving its initial seriousness of commitment to EU accession of the Western Balkans

After this positive development, surprisingly, the positive vibe toned down a bit in the 2004 report. Since the Feasibility Study the progress made in the indicated focus areas was deemed moderate

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<sup>132</sup> T. Börzel, *Matching Deeds to Words* 133-134.

<sup>133</sup> 'Report from the Commission The Stabilisation and Association process for South East Europe First Annual Report' (08-10-2015) <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52002DC0163&from=EN> 03-04-2002, 17.

<sup>134</sup> 'Report from the Commission The Stabilisation and Association process for South East Europe Second Annual Report' (09-10-2015) <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52003DC0139&from=EN> (26-03-2003) 28.

<sup>135</sup> 'Bosnia and Herzegovina: Commission approves Feasibility Study' (09-10-2015) [http://europa.eu/rapid/press-release\\_IP-03-1563\\_en.htm](http://europa.eu/rapid/press-release_IP-03-1563_en.htm) (18-11-2003).

with limited progress concerning ICTY cooperation. The Commission warned BiH that there was risk of losing all the progress made over the last few years.<sup>136</sup>

### *Police reform issue*

Despite this slightly less positive report, later that year Bosnia signed its first European Partnership and in 2005 the Commission formally opened the Stabilization and Association Agreement (SAA) negotiations. These negotiations, however, went a lot less smoothly than we have seen in Croatia. This all had to do with the demand of the Commission that BiH would have to reform its police apparatus in line with three criteria to enable them to sign the SAA. These criteria comprised of: the relocation of budgetary and legislative decisions from entity level to state level, redrawing police districts on technical rather than political terms, and the elimination of political interference in police matters.<sup>137</sup>

The importance of these criteria spanned further than internal police structures and had a clear political dimension because these reform matters were of eminent importance in reducing the capacity of RS officials to protect and harbour war criminals and to obstruct the return of refugees. However, were strict conditionality was able to unblock the ICTY and Piran Bay matters in Croatia, EU conditionality proved insufficient to entice domestic actors into action while the next step in the accession process was dangling in front of them.<sup>138</sup>

During the negotiations Milorad Dodik, leader of the Serb Alliance of Independent Social Democrats (SNSD), and Hariz Silajdzic, leader of the Party for Bosnia and Herzegovina (SBiH), did not accept the draft protocol on reform and developed a protocol on their own terms. However, because all the political main players had completely opposing views on the matter this drafting initiative soon collapsed, leaving the EU recommendation untouched and unimplemented.<sup>139</sup> The matter of police reform, thus, quickly became the arena for a larger discussion: federalist RS, defending the entity model of BiH and the Bosniaks and Croats who set out to unify the country.

This situation shows that the reward of closing in on EU membership did not provide enough gains for the RS political leadership to accept the loss of exclusive police control. That this was the

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<sup>136</sup> 'Report from the Commission The Stabilisation and Association process for South East Europe Third Annual Report' (28-10-2015) <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52004DC0202&from=EN> (30-03-2004).

<sup>137</sup> G. Vasilev, 'EU Conditionality and Ethnic Coexistence in the Balkans: Macedonia and Bosnia in a Comparative Perspective', *Ethnopolitics*, 10:1, (2011) 51-76, 58.

<sup>138</sup> G. Vasilev, 'EU Conditionality and Ethnic Coexistence' 59.

<sup>139</sup> *Ibidem*

case was confirmed two times by Dodik who implied that a lack of progress towards Europe was a price he was willing to pay for the maintenance of the status quo on police reform matters. He also stressed that police reforms would not happen even if it meant giving up the SAA negotiations.<sup>140</sup>

In an effort to defuse the situation, the High Representative started a campaign to dismantle the political myth that the existence of the two entities was at stake if the police reform got implemented. To counter this, Dodik kept pointing towards the arbitrary nature of the process and the hypocrisy that BiH was forced to implement the reforms despite a lack of uniformity within the EU itself. Therefore, different police structures could not form an obstacle to the accession process.<sup>141</sup> In response, however the EU firmly held ground by emphasising the equation ‘no police reform = no SAA’.<sup>142</sup>

The situation saw an unexpected breakthrough in December 2007, when everything seemed lost, the SAA negotiations were finally initialled. The EU had granted technical approval to the agreement on the basis of a compromise reached by BiH’s main party leaders in Mostar and the subsequent ‘Action Plan’ for reform adopted in Sarajevo several days later. The acceptance of this watered down reform package by the EU meant that the aforementioned ‘determination’ of the EU that it would not budge went out the window quite soon.<sup>143</sup> The concerns about this move were immediately expressed by a Dutch delegate to the CW+OWEB: ‘the signature of the SAA is just a manoeuvre of the Commission. You cannot reward someone for doing nothing. If you do not pass you exams, you cannot go to another level op class. However, initialling the SAA is just in the mandate of the Commission, we cannot oppose it from the Council’.<sup>144</sup>

In April 2008, the Bosnian Parliament adopted two technical laws on the discussion on police reform: the ‘Law on Directorate for Coordination of Police Bodies and Agencies for Support to Police Structure of Bosnia and Herzegovina’ and a ‘Law on Independent and Supervisory Bodies of Police Structure of Bosnia and Herzegovina. At the same time, further discussion on police reform got suspended until an agreement on the issue constitution was reached.

The small steps that were taken by the adoption of the two laws were welcomed by all the EU member states at first. To the international press, the achievement was not celebrated as much.

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<sup>140</sup> G. Vasilev, ‘EU Conditionality and Ethnic Coexistence’

<sup>141</sup> G. Venneri, ‘Conquered vs. Octroyée Ownership: Police Reform and Conditionality in the EU’s Peace/Statebuilding of Bosnia and Herzegovina’, *Review of European Studies*, 5:3 (2013) 48.

<sup>142</sup> *Ibidem* 49

<sup>143</sup> G. Venneri, ‘Conquered vs. Octroyée Ownership’ 55.

<sup>144</sup> *Ibidem*.

They pointed out how far the reform laws were from the goals as they were set out by the EU. This conclusion was also made in the 2008 progress report where the Commission openly expresses might have increased the institutional chaos affecting Bosnian Police.<sup>145</sup> Despite these concerns the signature of the SAA was already granted in June 2008. An EUSR official painfully added that ‘the conditionality bar was three meters high, they jumped less than a meter and we took it for granted’.<sup>146</sup> Despite the signing of the SAA and its subsequent ratification 32 months later, the Agreement did not enter into force due to the pending issue of the constitution which will be discussed in more detail below.

### *Constitutional reform.*

Next to the police reform issue, discussions on the constitution had been going on since 2005 when the OHR encouraged the Bosnian leadership to start secret, informal discussions, placing most emphasis on the issue of constitutional change. This issue came ten years after the signing of the DPA while the shortcoming were clear from the start to both the political leadership of Bosnia and the international community.<sup>147</sup> In March 2005, the European Commission for Democracy through Law (named the Venice Commission) published a report on the most pressing outstanding constitutional issues of BiH called ‘the Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative’.<sup>148</sup>

After this paper was issued, a period of intensified attention to constitution reform followed, mostly aimed at addressing problems with the functionality of the constitution and human rights. At the political level, this discussion must be seen on the backdrop of the eight main political parties and their own agenda and the deteriorating situation in connection with the police reform matter as was described above. However, eventually, these talks led to an agreement by the eight political parties, assisted by the external mediation of American consultants and the EU’s Venice Commission in March 2006. The result was the April Package (AP), a potentially transformative reform package. That is if it had not failed to pass the House of Representatives due to the rejection of the AP by SBiH and the Croatian Democratic Union (HDZ).<sup>149</sup>

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<sup>145</sup> ‘Commission Staff Working Document Bosnia and Herzegovina 2008 Progress Report’ (12-11-2015) [http://ec.europa.eu/enlargement/pdf/press\\_corner/key-documents/reports\\_nov\\_2008/bosnia\\_herzegovina\\_progress\\_report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/press_corner/key-documents/reports_nov_2008/bosnia_herzegovina_progress_report_en.pdf) (05-11-2008).

<sup>146</sup> G. Venneri, ‘Conquered vs. Octroyée Ownership’ 61.

<sup>147</sup> L.J. Cohen, J.R. Lampe, *Embracing Democracy* 92.

<sup>148</sup> V. Perry, ‘Constitutional Reform in Bosnia and Herzegovina: Does the Road to Confederation go through the EU?’, *International Peacekeeping*, (2015) 491.

<sup>149</sup> V. Perry, ‘Constitutional Reform’ 492

The failure of the AP and the police reform issue losing track resulted in a rapidly deteriorating political environment. The political leaders were losing themselves more and more in ethnic rhetoric, which worsened between 2006 and 2008. The most precarious moment came when RS president Dodik questioned the very cohesion of the country by arguing that RS had the right to hold a referendum on secession.<sup>150</sup> The EU made efforts to enhance the quality of the political debate and to pressure the political leaders to soften their tone during the municipal elections of 2006. Alarmed by the deteriorating ethnic discourse the EU repeatedly informed the Bosnian officials about the incompatibility of such rhetoric with EU values and norms and was putting its membership prospects in danger.<sup>151</sup> However, despite the strong convicting language from the EU to refrain from such behaviour, the public ‘debate’ deteriorated even further. For example, Dodik was no longer satisfied by merely advocating an independent RS and started to provoke Bosniak politicians and international officials even further by using a form of historic revisionism. Referring to a mortar attack on Tuzla in 1995, killing 71 people, Dodik stated that this attack was not carried out by Serbian troops but rather that it was a set up by Bosniak forces to trigger a NATO response. In reaction to this allegation, Dodik’s ‘best enemy’ Silajszic reacted by calling the RS a genocidal creation and called on the UN to revoke its recognition of RS.<sup>152</sup>

Due to a lack of progress, two international top-down efforts were undertaken, each of them failing almost immediately. First there was the EU driven Prud Process from November 2008 until January 2009 which failed immediately and was followed up by the EU-US led Butmir Process where the international actors set out to salvage the collapsed AP. Within this messy situation the political parties were increasingly less occupied with the actual substance of the discussion more and more about existential and conflicting views on the nature of the state.<sup>153</sup>

After these two apparent failures, another external driver for constitutional reform came into play. In December 2009 the European Court of Human Rights ruled in the Case of Sejdic and Finci vs. Bosnia and Herzegovina. Its verdict stated that the state of BiH had violated art. 14 of the European Convention on Human Rights on the prohibition of discrimination. The substance of the case was that Sejdic and Finci, the former a Bosnian Roma and the latter a Bosnian Jew, were not allowed to partake in politics in conformity with art V of the Bosnian constitution which states that only the so-called ‘constituent people’ of BiH (Bosniaks, Croats and Serbs) are eligible for taking up the

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<sup>150</sup> L.J. Cohen, J.R. Lampe, *Embracing Democracy* 92.

<sup>151</sup> *Ibidem* 95.

<sup>152</sup> P. Lippman, ‘To the Detriment of its Citizens, Bosnia’s Politicians Continue to Play Nationalist Card’ (10-10-2015) <http://www.wrmea.org/2009-january-february/to-the-detriment-of-its-citizens-bosnias-politicians-continue-to-play-nationalist-cards.html> (18-01-2009).

<sup>153</sup> V. Perry, ‘Constitutional Reform’ 493.

presidency or a seat in the House of Representatives.<sup>154</sup> However, despite some media attention, this court ruling did not cause any real political action and the ruling was not implemented due to the narrow political parties or/and ethnic interests. Between 2009 and 2014 the constitutional matter was dominated and blocked by the Sejfic and Finci case. This means that the legislative process of BiH remains weak and extremely slow. Due to a lack of political agreement, the legislations were most often blocked by using the Entity veto.<sup>155</sup>

#### *2014 initiative*

As we have seen with the long and painful struggles of police and constitutional reform, most of the initiatives undertaken by the EU to break a deadlock situation have failed to achieve their pre-set goals and forced the EU to settle for less. However, despite the slow or non-existent progress the EU did slowly continue in furthering the enlargement process with the signing of the SAA, only to postpone its ratification shortly after due to the already clear problems related to the police reforms. In short, a clear decline started in 2006 with the ‘war of words’ between Dodik and Silajdzic in 2006. Strangely, this political imbalance was disregarded in the subsequent EU progress reports. Especially the matter of constitutional change slowly went into the background to completely disappear from the international and domestic agendas by 2011.

Due to the stalemate in the aforementioned two areas the enlargement process of BiH seemed to be at a complete standstill between 2011 and the end of 2014. In order to revitalize the process, in late May 2014 the Commission held the Forum for Prosperity and Jobs for BiH (FPJ), an economic reform package with some political consequences woven into it. The main problems of BiH were identified to be unemployment and socio-economic reform stagnation.<sup>156</sup>

In November, the same year, at the Aspen Institute, the German Foreign Minister Steinmeier launched the United Kingdom-Germany initiative. According to the United Kingdom and Germany, it was more than time that BiH started to make significant steps in the accession process. According to Steinmeier there was a risk that some parties would use the debates on long-running and important political and constitutional questions to slow the process on urgent socio-economic reform. This effectively meant that the focus had to be shifted towards socio-economic reform, along the framework embedded within the FPJ. Progress within the areas identified in the FPJ

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<sup>154</sup> M. Milanovic, ‘Sejdic and Finci v. Bosnia and Herzegovina’ in: *American Journal of International Law* vol. 104 (Nottingham 2010) 1,2.

<sup>155</sup> E. Dapo, O. Ridic, ‘What does the European Union’s new approach bring to Bosnia and Herzegovina?’, *Journal of Transdisciplinary Studies* 8:2 (2015) 231.

<sup>156</sup> ‘Focus on Forum for Prosperity and Jobs in BiH: Business Environment and Investment’ (15-11-2015) <http://europa.ba/?p=17810> (10-07-2014).

would lead to the entry into force of Bosnia's SAA.<sup>157</sup> In January of 2015 the three political leaders of BiH, Zeljko Komsic (President of FBiH) and Miroslav Dodik (President of RS) approved the Germany-United Kingdom plan. Dodik added to his approval that it was conditional on the preservation of the constitutional jurisdiction of RS.<sup>158</sup>

Two months after the approval of the UK-Germany Initiative a political bombshell was dropped by Dodik. On the 25<sup>th</sup> of April Milorad Dodik stated that the RS would hold a referendum on independence in 2018 if there was no visible sign of stabilization and respect for the position of the RS, and if the jurisdictions were not returned to the RS by 2017 'in accordance with the DPA and the BiH Constitution'.<sup>159</sup> This clear call for independence later got watered down to a referendum on the judicial jurisdiction of the Bosnian court and the authority of the HR and the international community in BiH: "Do you support the unconstitutional and unauthorized imposition of laws by the High Representative of the International Community in Bosnia and Herzegovina, particularly the imposed laws on the Court and Prosecutor's Office of [Bosnia-Herzegovina] and the implementation of their decisions on the territory of Republika Srpska?"<sup>160</sup> This shows that the political leadership of RS, and Dodik in particular, wanted to send a clear message that the Initiative is acceptable but is in no way a pretext to further concessions.

Connected to the entry into force of the SAA the Council accepted a new Reform Agenda for 'BiH aimed at tackling the difficult socio-economic situation and advancing the judicial and public administration reforms. Meaningful progress in the implementation of the Reform Agenda is necessary for the EU to consider an EU membership application from Bosnia and Herzegovina'.<sup>161</sup> This approach thus, like the FPJ, focusses on socio-economic issues rather than the previous larger issues as constitutional and police reform. This approach seems to sequence these issues to a later, unknown stadium of the accession process.<sup>162</sup>

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<sup>157</sup> 'Bosnia & Herzegovina - a new strategic approach' (15-11-2015)

<https://www.gov.uk/government/speeches/bosnia-herzegovina-a-new-strategic-approach> (5-11-2014).

<sup>158</sup> E.M. Jukic, 'Bosnia Presidency Seals EU Reform Declaration' (25-10-2015)

<http://www.balkaninsight.com/en/article/bosnia-presidency-hatches-eu-reform-declaration> (30-01-2015).

<sup>159</sup> Bosnia Today, 'Republika Srpska to hold independence referendum in 2018' (25-10-2015)

<http://www.bosniatoday.ba/republika-srpska-to-hold-independence-referendum-in-2018/> (25-03-2015).

<sup>160</sup> J. Lyon, 'Is War About to Break Out in the Balkans? After 20 years of peace, Republika Srpska threatens to tear apart the agreement that has held Bosnia together. The West must stop it.' (versie 10-11-2015)

<http://foreignpolicy.com/2015/10/26/war-break-out-balkans-bosnia-republika-srpska-dayton/> (26-10-2015).

<sup>161</sup> 'Commission Staff Working Document Bosnia and Herzegovina 2015 Report' (versie 08-12-2015)

[http://ec.europa.eu/enlargement/pdf/key\\_documents/2015/20151110\\_report\\_bosnia\\_and\\_herzegovina.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_bosnia_and_herzegovina.pdf) (10-11-2015) 4.

<sup>162</sup> 'Reform Agenda for Bosnia and Herzegovina 2015 -2018.' (09-12-2015) <http://europa.ba/wp-content/uploads/2015/09/Reform-Agenda-BiH.pdf> (28-07-2015).



As for the effectiveness of the UK-Germany Initiative, the progress report of 2014 was still mostly negative. The overall conclusion of the report read that ‘the country remains at a standstill in the European integration process. There remains a lack of collective political will on the part of the political leaders to address the reforms necessary for progress on the EU path. There has been very limited progress on political and economic issues and on moving towards European standards’.<sup>163</sup> The fact that Bosnia went from ‘a standstill’ right up to the entry into force of the SAA on the 1<sup>st</sup> of July 2015 should mean that a lot has happened in a short period of time because the only indication of progress after the adoption of the UK-Germany can be derived from the November 2015 Progress Report.

The general conclusion of the 2015 progress report was indeed more positive than most of the progress report prior to the new Reform Agenda. However, even though some progress has been made in the judicial system, fight against corruption and regional cooperation the overall tone of the report remains all but positive. The constitutional architecture remains insufficient and in breach of the European Convention on Human rights, public administration remains highly politicized and service delivery is still poor, and BiH is still facing many challenges regarding human rights and the protection of minorities.<sup>164</sup>

#### *4.4 Conclusion*

The Regional Approach, as was the case in Croatia, did not incentivise BiH enough in order for them to comply with the relevant criteria of the Regional Approach. At the end of 2000 BiH only managed to comply with one condition.

The similarities between Croatia and BiH when it comes to non-compliance vanished after 2000. Croatia started to make progress in meeting the criteria as set out by the EU while BiH was still struggling. However, in November 2003 the mood lightened up as the Feasibility Study of the European Commission moderately positive, although with a strong call for the need of continued progress.

After the start of the SAA negotiations BiH could not enjoy this positive development for long because soon after that the first deadlock situation presented itself: the issue of police reform. Eventually EU conditionality proved to be ineffective in overcoming this situation and with the

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<sup>163</sup> ‘Bosnia and Herzegovina Progress Report 2014’ (10-12-2015)  
[http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-bosnia-and-herzegovina-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-bosnia-and-herzegovina-progress-report_en.pdf) (10-2014) 2.

<sup>164</sup> ‘Report Bosnia and Herzegovina Progress 2015’ (18-12-2015)  
[http://ec.europa.eu/enlargement/pdf/key\\_documents/2015/20151110\\_report\\_bosnia\\_and\\_herzegovina.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_bosnia_and_herzegovina.pdf) (10-11-2015) 3-4.

adoption of two purely technical laws the matter was closed. However, this 'solution' was soon recognised as a mistake. Not only were these two laws far from what the EU initially demanded, in 2008 the EU itself confessed that the situation was worsened rather than solved. The second deadlock situation, the constitutional reform issue, showed a similar story. This situation did not yet see any resolve and eventually the coming of the 2014 initiative put the matter on hold until progress in socio-economic areas has been made.

The 2014 Initiative seems to put BiH back on track. By focussing on social economic issues the EU has been trying to achieve progress in less controversial areas. The entry into force of the SAA in July 2015 however, came at the cost of suspending the matter on constitutional reform yet again. The future will have to tell whether or not the choice to accept non-compliance temporarily will pay off.

## **Chapter 5: Comparison of the effectiveness of EU conditionality.**

Now that both the accession processes of Croatia and Bosnia and Herzegovina (BiH) have been described, the external incentives model can be applied. This chapter will analyse the data collected in the previous chapters. With this chapter the previous four chapters will come together, the methodological framework will now be used to evaluate the effectiveness of the EU conditionality in Croatia and BiH.

In discussing the development of the Regional Approach in Croatia and BiH it became clear that both countries stayed well behind in complying to the conditionality set by the Regional Approach. In the case of Croatia, at the end only one chapter was closed. For Bosnia the level of compliance was largely the same and all progress reports note very limited or no progress.

### *5.1 Applying the External Incentives Model to the Regional Approach.*

#### *Determinacy of the Regional Approach,*

According to the external incentives model, the determinacy of European Union (EU) conditionality is explicitly linked with the clarity and formality of the conditionality. In short, this means that determinacy is enhanced when the conditions are clearly formulated, the candidate state knows exactly what it has to do in order to get the rewards. Secondly, the determinacy enhances when the EU sets its rules as hard demands, the candidate country cannot avoid complying with the demands for it to reach the rewards.

As for the Regional Approach, we have seen that the EU had set out to achieve a rather ambitious set of reforms. However, as was concluded by various scholars such as Cohen and Anastasakis, the criteria enlisted within the documents connected to the Regional Approach were formulated in broad terms and thus left much uncertainty as to what exactly was asked for by the EU.<sup>165</sup> Adding to this, BiH and Croatia were only just emerging from the war and the implementation of the Dayton Peace Agreement (DPA) had just freshly started. The long and fuzzy list of Regional Approach added more and more conditions to the already long list of DPA obligations. This made it difficult for aid and agreements to come through.<sup>166</sup>

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<sup>165</sup> S. Blockmans, *Tough Love* 245.

<sup>166</sup> O. Anastasakis, V. Bojicic-Dzelilovic, *Balkan Regional Cooperation & European Integration* (London 2002) 21-22.

Overall one can conclude that the determinacy of the Regional Approach was low. It was not clear what exact criteria Croatia and Bosnia and Herzegovina had to comply with in order to receive the rewards.

*Size and Speed of rewards of the Regional Approach,*

The external incentive model also states that the likelihood of rule adoption increases along with the size of the rewards. As for the regional approach, the rewards connected with it never entailed any prospect of membership. Also, because the Regional Approach was based on the Copenhagen Criteria but also had added conditions to deal with the regional characteristics and issues, the list of criteria was made longer than those for the countries part of the Central Eastern European Countries enlargement process while membership was not part of the rewards. As was described, the EUs carrots were limited to mainly financial aid, trade measures and as highest reward the Trade and Cooperation agreement. However, during the 1990s Croatia and BiH received financial and material aid via various aid programs, which were not connected to any conditionality making compliance to the long and tiresome list of criteria unnecessary for receiving aid. Thus, the rewards proved to be insufficient to persuade both Croatia and BiH into action and commit themselves to comply with the set conditions.

*Credibility of conditionality of the Regional Approach*

Another aspect of the Regional approach was that the EUs granting of rewards was inconsistent and not directly linked to actual compliance to the criteria of the Regional Approach. As we have seen, both Croatia and BiH did not show any substantial progress in meeting the criteria set forth by the Regional Approach. However, Croatia remained excluded from PHARE assistance while BiH did receive financial support from the PHARE program and various other aid programs. Thus the Regional Approach's payment of rewards was characterised by some degree of diversity of EU bilateral relations, which remained mostly focussed on reconstruction and humanitarian aid.<sup>167</sup> This lowers the credibility of conditionality. As Schimmelfennig and Sedelmeier put it: 'if the EU were perceived to subordinate conditionality to other political, strategic, or economic considerations, the target state might either hope to receive the benefits without fulfilling the conditions or conclude that it will not receive the rewards at any rate'.<sup>168</sup>

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<sup>167</sup> O. Anastasakis, V. Bojicic-Dzelilovic, *Balkan Regional* 22.

<sup>168</sup> F. Schimmelfennig, U. Sedelmeier, 'Governance by conditionality' 674.

## 5.2 *Applying the External Incentives Model to the Stabilization and Association Process.*

### *Determinacy of conditionality*

Chapter 4 and 5 portrayed a varying image of the effectiveness of the Stabilization and Association Process (SAP). The process in Croatia went relatively smooth while BiH has been the main laggard of the Western Balkans. As Kochenov concluded, in reality, the Copenhagen Criteria were not a step towards simplification, improvement and depoliticisation but rather was a big step towards vagueness and unpredictability. Requiring the aspiring Member States to comply with criteria that were formulated in such a vague and general way that the principles of assessment of compliance were also very unclear.<sup>169</sup> The criteria are formulated in a way that it remains unclear what the Copenhagen political criteria mean in detail and on what ground the Progress reports pick one or the other issue for discussion.<sup>170</sup> This way, the risk that compliance with the Copenhagen criteria comes down to cherry-picking by the Commission is real. This can become problematic because without a clear definition of what the Copenhagen criteria entail the EU can interpret the terms inconsistently in order to accept or decline a country into the Union, lowering its determinacy.<sup>171</sup>

As for the SAP, much of the problems related to the SAP have to do with the fact that the EU has created an enormous list of conditions that has to be fulfilled prior to accession.<sup>172</sup> However, the exact nature of these criteria, additional to the Copenhagen criteria was rather unclear. The problem of unclear criteria was exacerbated by unclear benchmarking and the very nature of the SAP: ‘the double strategy of stabilization and association has meant a set of priorities and a jungle of conditionality that does not fare well for the clarity and determinacy of EU conditionality’.<sup>173</sup> In this sense, the SAP suffered the same problems of clarity, measurement, moving targets and politicized conclusions on progress as the Copenhagen Criteria and the Regional Approach.<sup>174</sup> Here, just like with the Copenhagen Criteria there is a problem with assessing political conditionality. In many of the fields connected to political conditionality of the SAP the EU itself

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<sup>169</sup> D. Kochenov, *Behind the Copenhagen Façade*.12

<sup>170</sup> *Ibidem*, 11.

<sup>171</sup> P. Rezler, ‘The Copenhagen Criteria: are they helping or hurting the European Union?’, *Touro International Law Review* 14:2 (2011) 396.

<sup>172</sup> A. Elbannasi, *The Stabilisation and Association Process in the Balkans: Overloaded Agenda and Weak Incentives?* (San Domenico die Fiesole 2008) 13.

<sup>173</sup> *Ibidem* 13.

<sup>174</sup> C. Gorden, *The Stabilization and Association Process in the Western Balkans: An Effective Instrument of Post-Conflict Management?* (2009) 328

does not have clear instruction of clearly defined policy goals how political goals and their achievement should be assessed.<sup>175</sup>

*Size and speed of rewards.*

Within the framework of the SAP the largest reward would be EU membership. The prospect of membership for the countries of the Western Balkans connected with the SAP was confirmed in 2000 by the European Council at the Feira European Union. However, as Elbannasi stated, the wording of the countries of the region becoming ‘potential member states’ constituted a rather vague promise. Later it was reaffirmed at the Zagreb summit in November 2000. This was a great step forward in comparison with the Regional Approach that merely offered contractual relations and financial support. However, the commitments made during these summits were purely political in nature and offered no contractual relations. Eventually the Thessaloniki summit in June 2003 offered a firmer tie between the EU and the Western Balkans concluding that the Stabilization and Association Agreement (SAAs) were to be the first and the last contractual agreements up to membership.<sup>176</sup>

In the case of Croatia, the EU was fast to formally acknowledge its future within the EU by starting the SAA negotiations immediately after the Thessaloniki Summit. The fact that the negotiations only took 11 months gave Croatia a real and credible membership perspective early on in the accession process. After the signing of the SAA it took four years for the SAA to enter into force, also due to the delay caused by insufficient ICTY cooperation. The immediate start of the accession negotiations after Croatia complied with the ICTY conditions made for a speedy payment of the reward. With the entry into force the membership perspective of Croatia formalised, offering the golden carrot. In the case of Croatia, the size of rewards has been large enough. The size of the reward of EU membership, in combination with the credibility of this rewards has resulted in compliance during the two deadlock situations.

The process in BiH was different when it comes to the size of rewards. BiH’s membership perspective remained purely political much longer than was the case for Croatia. As was noted, SAA negotiations started in 2005 and the agreement was signed more than three years later in June 2008, thus taking up considerably more time than the 11 months it took in Croatia. Additionally, the true contractual promise of the SAA derives from the actual entry into force of the agreement;

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<sup>175</sup> O. Anastasakis, ‘The EU’s political conditionality in the Western Balkans: towards a more pragmatic approach’, *South East European and Black Sea Studies*, 8:4 365-377 (2008) 370.

<sup>176</sup> A. Elbannasi, *The Stabilisation and Association* 15.

this did not happen until June 2015. Thus, for BiH the rewards offered by the EU remained purely political and the terms of the promise remained vague and without clear time schedule.

### *Credibility of conditionality*

As was formulated by Schimmelfennig and Sedelmeier, credibility increases when the candidate state is certain that the promised rewards are received after meeting EU demands but also when they believe that only full compliance will indeed result in receiving the reward. The EU has indeed shown its perseverance in the Croatian accession process twice. Both during the International Criminal Tribunal for the former Yugoslavia (ICTY) deadlock situation and the Piran Bay issue the EU was strict in its application of conditionality, creating two end-games of highly credible conditionality. Croatia knew that it had to cooperate in order to move further in the process. Also, in both cases, when Croatia finally complied with the set conditions, payment of rewards followed immediately. Not only when dealing with situations of political deadlock did the EU apply very strict conditionality, from the beginning of the process Croatia was put under a rigorous conditionality regime. As was described, in many areas Croatia had to commit to conditions for accession that were stricter than those actually in place within the EU.

However, in BiH the EU has shown its weakness several times. Firstly, police reform was a clear demand for the SAA negotiations to start. Despite this seemingly hard criterion before entering the next phase of the accession process, full implementation of the police reforms did not occur. Eventually the EU accepted the adoption of the two technical laws and suspended the matter until the issue of constitutional reform was handled. By doing so, the EU accepted half-hearted measures in favour of progress. That this was a mistake was acknowledged by the Commission several months later when it expressed that the two laws might even have increased the institutional chaos affecting Bosnian Police.

By putting police reform on hold, the EU focused on the matter of constitutional reform. This progress went even more slowly than the police reforms, several initiatives were started but none proved to be successful. Eventually, without any change being implemented, the EU saw no possibilities for progress without changing course. This was done at the end of 2014 by the 2014 Initiative. By focusing on the entry into force of the SAA the EU tried to put the accession process back in motion. In order to enable BiH to start its next phase towards accession, the matter of the constitution was put on hold until an unknown point in the future. With this step, the process towards the SAA that started ten years ago in 2005 was finally completed. However, according to the external incentives model the EU, once again, let conditionality be watered down because of

the pervasive non-compliance of the national political parties. The SAA entered into force after BiH complied with much different and weaker conditions than originally envisaged, resulting in the constitutional matter being put on hold and police reform being only partially completed.

In view of the 2014 Initiative, there are two strands of thoughts. Scholars like Dapo and Ridic see the new approach of the EU as a show of creativity of the Union. By focusing on the economic development of the country political stability will also improve. This increased political stability will, in turn, enable BiH to make the extra miles and overcome issues that are in deadlock right now, two birds with one stone.<sup>177</sup> However, one could also argue that, by letting the SAA enter into force despite BiHs inability to adhere to the set conditions weakens the credibility of the EU and the formality of its accession criteria. This could be a signal to the main political actors that perseverance in noncompliance eventually pays off as the EU will budge sooner or later. Within this context, the scheduled RS referendum could not only be a possible, though illegal, legitimization to overrule any court rulings or HR decisions but also a signal to the EU that RS will not give in. Thus, the credibility of the EU has been higher in the case of Croatia's accession process as in the process of BiH. However, due to the long and lasting deadlock of the two situations the coming years will teach us whether or not this loss of credibility has been a bad thing.

Another problem related to the credibility of the Stabilisation and Association Process in BiH is that many of the reforms lack a sense of ownership due to the role of the OHR and the European Commission. The local elites of the three constituent peoples seem to portray most reform matters as a 'dictate of the EU'. Both the police reform efforts and the constitutional reform initiatives were started by the pressure of the EU and most notably the HR. Neither of these efforts came as an initiative of a national party. Due to this lack of ownership, national politicians were not incentivized to act, even though not all parties were opposed to the implementation of the various reforms. By the imposition of rules and laws BiHs lack of sovereignty stood in the way of progress towards accession.<sup>178</sup>

In short, by comparing the level of determinacy of conditionality as it was practiced in Croatia and BiH it became clear that the SAP, in both cases, lacked clarity. However, in Croatia the EU has proven to be decisive in times of apparent deadlock, increasing the formality

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<sup>177</sup> E. Dapo, O. Ridic, 'What does the European Union's 236.

<sup>178</sup> W. Koeth, Bosnia, Kosovo and the EU: Is Accession Possible without Full Sovereignty? (Maastricht 2012) 34.



### 5.3 National identity

Now that the external incentives model has been applied to the accession process of Croatia and BiH the influences of national identity on the effectiveness of conditionality has to be evaluated. This will be done by first describing the cultural relationship of the both Croatia and BiH with the European Union and the popular opinion on accession. Then, the effects of national identity conditionality during the several deadlock situations will be measured.

#### *National identity in Croatia*

In the case of Croatia, it has been made clear that, prior to 2000, the main political party, the Croatian Democratic Union (HDZ), was in principle opposed to EU membership. However, the regime change taking place turned around the political situation in favour of EU membership. Due to this turn-around, the number of veto players dropped severely and adoption costs decreased. As we have seen above, during its 2000 summit in Zagreb the EU presented its new approach to enlargement for the Western Balkans. The fact that Zagreb was chosen as the site for this important meeting was an encouraging fact for the Croatian people and government. This showed the Croats that they had a realistic chance to become a full Member State to the EU. Hopes were raised that Croatia could join the accession round of Bulgaria and Romania, or at least join between somewhere between 2007 and 2009. This shows that, around 2000, public opinion in Croatia was largely in favour of joining the EU.<sup>179</sup>

These pro-EU sentiments were already present in Croatia in the beginning of the 90s. During the tumultuous times, right after the collapse of Communism, 85% of the Croats believed that the EU could protect them and liberate them from violence. However, this EU-optimism ran opposite to the line of Croatia's main political party that dominated the 1990's: HDZ, a highly nationalistic party under the leadership of Tudjman. But when the hostilities died down during the second half of the decade, popular support of the HDZ began to decline. Surveys held in 1999 on the eve of the next elections show that more and more people were attracted to the idea of EU membership; many respondents saw membership as a way to improve their economic situation. When asked whether they favoured creating ties with the EU or if they thought preserving full sovereignty was more important 48% voted in favour of EU ties while 30.4% voted in favour of full sovereignty (20.4% were undecided).<sup>180</sup> This shows that EU-optimism did not suffer all too much from the

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<sup>179</sup> B. Letica, *Europe's Second Chance: European Union Enlargement to Croatia and the Western Balkans* (

<sup>180</sup> A. Konitzer, 'Speaking European: Conditionality, 1859-1860.

EUs indecisive handling of the war or from the fact the EU declines Croatia as a potential Member State.

Much of the EU-optimism during the 90s and 00s derives from a deeply rooted sentiment that the Croats are European. Therefore, joining the EU a high symbolic value. According to various scholars, Croats have identified themselves more with Europe than they did with the Balkans. Therefore, EU membership has had a profound pull on public opinion for membership would confirm Croatia's 'western' identity.<sup>181</sup> This belonging to Europe was also confirmed by Samuel Huntington who described Croatia as belonging to Western civilization while Bosnia and Herzegovina (BiH) belonged to the Eastern civilization.<sup>182</sup>

As was described above, during the elections of 2000, the HDZ got replaced by the more progressive Racan government. From this point the public opinion, favourable towards EU interaction, was duly reflected in Croatia's national politics. The HDZ knew it had to modernise and change their point of view on EU accession in order to regain their footing as leading party.

*National identity and ICTY cooperation and the Piran Bay issue.*

According to the theory of Freyburg and Richter, national identity can have a crucial impact on the effectiveness of conditionality. According to this theory, in the case of Gotovina there was a change in national identity which caused the switch of policy by Croatia. During the years 2001-2005 Croatia still saw itself as an innocent, heroic and honest nation. Within this framework, the extradition of Gotovina would pose a serious infringement of the national identity. Both the Racan and Sanader government saw extradition as an attack on Croatia's national identity. However, with the passing of time the European identity and Croatia's belonging to Europe became stronger as they progressed in the accession process. Thus, Croatia had to deal with two conflicting identities. The identity of Croatia as the heroic nation of the war was now effectively blocking EU accession. Due to these conflicting identities and the perseverance of the EU could offer sufficient incentives to break the deadlock.

During the Piran Bay discussion the same situation occurred. The territorial integrity that had been fought over during the year was being threatened by Slovenia. This went straight into the collective identity of Croatia as the heroic nation that fought for its very existence. However, as was the case

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<sup>181</sup> Bartol Letica, *Europe's Second Chance: European Union Enlargement to Croatia and the Western Balkans* 218.

<sup>182</sup> S. Huntington, *The Clash of Civilizations and the Remaking of World Order*, (New York 1996) 156-163.

with the Gotovina case, the effective blocking of Croatia's progress on its road to Brussels proved sufficient to persuade Croatia into giving in to a Court ruling.

### *National identity in BiH*

Since the 90s BiH has struggled with its immense task of coping with a triple transition, from war to peace, from authoritarianism to democracy and from a planned economy to a market economy. Hereby it is important to mention that drawing conclusions on the general public opinion in Bosnia and Herzegovina is difficult because the public of Bosnia and Herzegovina is still, to some degree, divided along ethnic lines. The complex political structure and the different perspectives within the two entities of BiH, the Federation of Bosnia and Herzegovina (FBiH) and the Serb Republic (RS), on EU accession is also reflected in the media. The public perception in RS is that the EU accession process could pose a threat to the very existence of the entity system and the RS itself. In the Federation of BiH, on the other hand, the general opinion is that EU accession is a guarantee for the continuation of the Federation as a state, or as an external solution to the internal division of the country. According to Lejla Turčilo, this shows that among the people of Bosnia and Herzegovina there is a varying sense of existential importance tied to the EU accession process.<sup>183</sup>

The divide between the RS and FBiH is also duly reflected in the media. Meaning that the media in the FBiH promotes the idea of EU accession and is linking it directly to the preservation of the Federation as a whole. The media in RS is often reporting on internal problems of the EU Member States arguing that EU membership does not guarantee stability in a state.<sup>184</sup>

By looking at public opinion assessments done over the years one can see that an overall image of like-mindedness exists and most importantly persists. For example, an inquiry on the public opinion in BiH concerning EU accession showed that most Croats and Bosniaks do not perceive the process to EU accession as going counter to their national interests. However, overall, the participants to the enquiry from RS expressed some unease with regard to the EU integration and the self-preservation of RS autonomy but they did not believe that EU accession necessarily runs counter to national interests as long as the DPA framework remains the same.<sup>185</sup> A clear gap between euro-optimism between FBiH and RS is indeed noticeable. In 2009 public opinion surveys pointed out that 87% of the Bosnians completely supported EU accession while 12% opposed it.<sup>186</sup>

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<sup>183</sup> L. Turčilo, *Bosnia-Herzegovina and the European Union: Strong European Identity in Spite of Scepticism* (Sarajevo 2013) 3.

<sup>184</sup> L. Turčilo, *Bosnia-Herzegovina and the European Union* 3.

<sup>185</sup> FPI BH, 'BiH public opinion on the EU integration processes 2009-2012' (01-01-2016)

[http://www.vpi.ba/upload/documents/eng/BiH\\_Public\\_Opinion\\_on\\_the\\_EU\\_integration\\_process\\_2009-2012.pdf](http://www.vpi.ba/upload/documents/eng/BiH_Public_Opinion_on_the_EU_integration_process_2009-2012.pdf), 21.

<sup>186</sup> NDI, 'Public Opinion Poll Bosnia and Herzegovina (BiH) August 2010' (01-01-2016)

[https://www.ndi.org/files/NDI\\_Bosnia\\_Poll\\_Report\\_August\\_2010.pdf](https://www.ndi.org/files/NDI_Bosnia_Poll_Report_August_2010.pdf) (09-2010).

Despite this strong pro-EU position of most of the population it has become clear that most of the local elites, most notably the Serbs, representing the three constituent people use a discourse of calling most reforms a ‘dictate of the EU’. This poses a big problem for the democratization process because local ownership is an indispensable component to this process. In RS, local, corrupt politicians have been fostering violent ethno-nationalist propaganda to oppose the reforms needed to meet the set criteria.<sup>187</sup>

Overall, RS is perceived to be the biggest source of resistance to EU conditionality. Much of this scepticism is connected to the abovementioned preference of sustainability of RS over EU membership. Therefore, RS politicians have a broad electoral base to deny EU criteria that is believed to run counter to RS interests. The fear of loss of autonomy for RS was often ground for stalemates in the EU accession process, as was described in chapter 5. Despite this fear, surveys over the years show that the population in RS is not fully opposed to EU membership, however, the sustainability of RS and the perseverance of the DPA constitution is preferred over it.<sup>188</sup>

The persistence of RS politicians in defending the authority of the entity and the DPA constitution has proven to be disastrous for the EU accession process. As we have seen, ethnic identity has played a decisive role during BiH’s entire accession process. Helped by the DPA constitution the three ethnic groups were able to block EU criteria that ran counter to group identity. This was shown in both the case of police reform and constitutional change.

During the discussion surrounding police reform, the Serbian identity as being part of a semi-autonomous part of BiH has been completely incompatible with the proposed reforms. The reforms would impede the power of RS officials to protect Serbian war criminals, and the relocation of budgetary and legislative decisions from entity level to state level was seen as handing over sovereignty to FBiH, which was unacceptable. However, where a strong European identity was sufficient to force a breakthrough in Croatia, the public opinion in RS was not anti-EU but RS autonomy and the preference of the DPA constitution were issues of much greater importance.

Therefore, EU conditionality was unable to break the deadlock. Considering the strong national identity present in BiH that runs counter to essential EU criteria it becomes clear why the EU was unable to force a breakthrough in the two deadlock situations. As was shown above, especially during the discussion on police reform the EU has created a seemingly perfect end-game of high credibility. However, just like Freyburg and Richter argue, national identity was highly incompatible

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<sup>187</sup> I.G. Barbulascu, M. Troncota, *EU’s “Laboratory” in the Western Balkans. Experimenting Europeanization without Democratization. The Case of Bosnia and Herzegovina* (Madrid 2013) 87-88.

<sup>188</sup> G.O. Tuathail, J. O’Loughlin, D. Djipa, ‘Bosnia-Herzegovina Ten Years, 60.

with the demands and thus conditionality, how credible and determinate it might be, was not able to overcome this.

#### *5.4 Conclusion:*

By applying the external incentive model to the Regional Approach and SAP in Croatia and BiH it became clear that both initiatives have problematic aspects. The Regional Approach has severe shortcoming in all the areas important to the external incentives model. The conditions were unclear, the carrots were not big enough to force compliance, and the EU was inconsistent in paying out the rewards.

Furthermore, it has been made clear that the effectiveness of the SAP, and the Copenhagen criteria as underlying process, has been questionable at the very least. The Copenhagen criteria are formulated in a fuzzy manner and the monitoring procedures lack guidelines making it vulnerable to politicisation. As for the SAP, it has been shown that there is a severe lack of clear priorities and benchmarks, lowering the determinacy of the SAP.

However, the EU has shown that perseverance in conditionality has the potential to break deadlock, as was the case twice in Croatia where the EU managed to create an end-game of high credibility. In BiH this perseverance did not manage to get the same results forcing the EU to water down its demands. However, not that the EU accepted less than they asked for BiH was able to get its SAA enter into force, giving them a contractual membership promise rather than a purely political one which might provide a good impulse to its accession process.

The most interesting aspect of the chapter has been the joining of the theory of national identity with the external incentives model. By looking at the compatibility of EU demands in deadlock situations in Croatia and BiH it has become clear that national identity indeed has been playing an important role in the process. In Croatia EU conditionality was initially met with strong opposition due to conflicting national identities. However, the national identity of the heroic nation that fought for its territory was challenged by a European identity that was getting stronger and stronger as accession came closer. In BiH this was not the case, national identity has been, and still is strongly opposite to EU conditions related to constitutional and police reform. Compliance is not likely to follow if a more pro-EU identity will not arise.

## Conclusion

This research has described the European Union (EU) accession process of Croatia and Bosnia and Herzegovina (BiH) and sought to find an answer to the question of: *how has the EU applied political conditionality in Croatia and Bosnia and Herzegovina between 1997 and 2015 and how effective has it been?* This has been done by using two models that enabled the evaluation of effectiveness of conditionality: the external incentives model and the national identity theory.

Due to the largest enlargement wave of the EU's history that was just around the corner, the EU saw that stricter guidelines to guide the enlargement process were needed. The Council laid down political, economic and legal conditions in commanding terms. The political criteria are that a state has to respect the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law.

Later, these criteria would be the cornerstone of the Eastern enlargement round but would later also be put in use in Croatia and BiH. The relationship of the EU with Croatia and BiH has been a long and rather tiresome one. During the wars in Yugoslavia, the EU has tried, rather half-heartedly, to end the violence, unfortunately to no avail. After the war, in 1996, the EU recognized the importance of stability in its own backyard. In an attempt to bring the once fighting people of BiH and Croatia together, the EU devised the Regional Approach. The focus of this approach is all in the name. By focussing on regional cooperation, the EU tried to mend the ties that were broken during the violent dissolution of Yugoslavia. The EU offered autonomous trade measures, participation in the PHARE programme and Contractual relations. In order to obtain these rewards, the countries of the Western Balkans had to adhere to several conditions. These conditions could be seen as an advanced version of the Copenhagen Criteria, with additional criteria to deal with the specifics of the region.

However, as we have seen, the Regional Approach did not persuade Croatia and BiH to adhere to the set conditions. By applying the External Incentives Model it became clear that the Regional Approach had many deficits to blame its ineffectiveness on. Firstly, its criteria were formulated in a broad and fuzzy manner adding even more obligations to the freshly signed Dayton Peace Agreement (DPA). Secondly, the rewards were not large enough to outweigh the heavy list of conditions. It was very clear from the start that the Regional Approach would not be an instrument towards accession. The trade preferences or financial support mechanisms did not incentivise to comply with EU conditionality. Adding to this is the fact that the EU was inconsistent in the payment of the rewards. As we have seen, where both Croatia and BiH did not comply sufficiently

to the conditions linked with the Regional Approach, BiH did receive PHARE assistance and Croatia did not. Thus overall, the Regional Approach was neither determinate, nor credible and the speed and size of rewards proved insufficient.

In 1999 the EU was confronted with the ineffectiveness of the Regional Approach, when the war in Kosovo broke out it was evident that a new strategy had to be devised. In May 1999 the EU announced the SP and with it the first political commitment to draw the region of the Western Balkans closer to the EU with a perspective of full integration through contractual relations.

This new approach was formalized in the same year with the creation of the Stabilization and Association Process (SAP). This approach reshaped the ineffective Regional Approach into a strengthened approach that focused on regional cooperation while judging each country on its own merits. The new approach focussed on stabilisation and association. The main instrument of the SAP was the Stabilization and Association Agreement (SAA), offering a tailor-made package of contractual relations.

On the outset, the SAP was seen as a far-reaching approach that looked promising. Now, 16 years later, we must conclude that the SAP had mixed effects on Croatia and BiH. Croatia did not proceed through the process quickly but still made gradual progress that eventually led to membership in 2013. BiH however, had severe problems with showing any significant progress during this period. By identifying moments of deadlock in both countries we have been able to analyse the effectiveness of the EU conditionality to cause a breakthrough.

By applying the External Incentives Model to the EU conditionality to BiH and Croatia clear similarities and distinctions came to light. Firstly, there was a clear issue with the clarity of the Copenhagen Criteria. The conditions connected to the criteria were unclear and the assessment procedure by which the Commission monitors each country lacked clear guidelines making it look random and vulnerable to politicisation. The same has to be said about the SAP. With this approach, the EU has constructed an enormous list of conditions and criteria while not offering clear priorities or benchmarks. The introduction of the Europe Agreements did offer some clarity but was largely insufficient. This all lowers the determinacy of the SAP, and thus also the Copenhagen Criteria.

Secondly, in Croatia the EU has shown its perseverance twice. Both during the problems connected to ICTY cooperation and with the Piran Bay deadlock situation the EU did not lower their demands. By doing so the EU created an end-game of highly credible conditionality. Also, when Croatia eventually decided to comply with the criteria the EU acted fast to pay out the rewards.

In BiH, on the other hand, the EU has not been able to maintain the same persistency. The discussion on police reform in BiH in many ways was similar to the situation of International Criminal Tribunal for the former Yugoslavia (ICTY) cooperation in Croatia; BiH was on the verge of making a big step in the accession process by starting the SAA negotiations. However, in contrast to Croatia this did not persuade BiH, in particular RS, to comply with the conditions. Eventually the EU budged and accepted the implementation of two small police laws that by far did not solve the issue. The same has to be said by the EUs handling of the constitutional issue. This issue had been put on hold until later times in order to free the way for the entry into force of the SAA. Thus the credibility of conditionality has been considerably lower in BiH than in Croatia.

Thirdly, the SAP did provide BiH and Croatia with a political commitment to EU membership. However, a political promise did not provide any contractual commitment and thus remained rather vague. The signing and entry into force of an SAA on the other hand provides a much stronger message, as it provides a contractual relationship between the EU and the candidate state. Croatia was able to sign its SAA only eleven months after the start of the negotiations, the eventual entry into force was delayed by the problems with ICTY cooperation but since 2005 Croatia has had a contractual membership promise. The immediate start of the accession negotiations after Croatia complied with the ICTY conditions made for a speedy payment of the reward.

As was described, the process in BiH was different when it comes to the size of rewards. Bosnia's membership perspective remained purely political much longer than was the case for Croatia. As was noted, SAA negotiations started in 2005 and the agreement was signed more than three years later in June 2008, thus taking up considerably more time than the 11 months it took in Croatia. Additionally, the true contractual promise of the SAA derives from the actual entry into force of the agreement; this did not happen until June 2015. Thus, for BiH the rewards offered by the EU remained purely political and the terms of the promise remained vague and without clear time schedule. Since recently BiH has a real membership perspective, the future will have to tell if the entry into force of the SAA provides will have the power to achieve a breakthrough, most particularly in the constitutional reform discussion. However, the fact that the initial signing of the agreement in 2008 did also not foster any real progress has to be kept in mind.

Fourthly, and most importantly however, by analysing the national identities of both countries and their compatibility with EU conditionality, it can be concluded that Freyburg and Richter are right by stating that conditionality is bypassed when national identity is in the way. As was shown, Croatia and the national identity of being an honest and heroic nation. Extradition of a war hero ran counter to this belief as it would mean a confession of criminal behaviour of a Croatian military



leader during the war. Yet, this conflictual national identity was clearly challenged by the Croatian sense of belonging to Europe. Joining the EU did not merely offer economic opportunities but meant a return to Europe, where Croatia belonged. This conflictual national identity made it possible for conditionality to be effective. The step towards a contractual membership promise proved to be more important than the loss of a sense of heroism.

In BiH, EU accession is supported by most parts of the population. However, in RS most significantly, EU conditionality cannot be adhered to if it would mean a loss of sovereignty of the entity. The national identity of the three constituent people has proven to be too strong to be challenged by the potential profits of EU accession. Unlike in Croatia, BiH lacks a strong national identity of belonging to Europe. This means that the aspects that make conditionality effective according to the External Incentives Model do not apply to BiH. Credible and determinate conditionality for receiving a sizable reward has not been enough to achieve compliance.

Before conducting this research, the most interesting methodological approach was that of joining the External Incentives Model with the theory of national identity thereby operationalizing the ability to measure the effects of the subjective aspects of national identity. The case of BiH indeed proved that national identity can more than effectively block conditionality. Therefore, looking ahead, I would argue that the decision of the EU to give in to BiH's non-compliance in police and constitutional could prove to be a smart move. Credibility did not and, most likely, will not change the situation any day soon, obstructing other important conditions from being implemented. By letting the SAA enter into force, the EU is trying to set the process back in motion. Now that the EU is focussing their conditionality on socio-economic issues, hopes for economic and social improvements for the people of BiH arise. If this is going to be the case, the EU might be able to demonstrate its ability to bring prosperity, thereby creating popular support for the accession process. By enhancing the pro-EU sentiment in BiH and most importantly in the Serb Republic (RS), only if the willingness and desire to belong to the EU grows the enlargement process will stand a chance. Especially because public opinion surveys have indicated that people in RS are not objecting to EU accession such but only if it threatens the existence of RS. This means that socio-economic reforms have a much greater chance of succeeding as they are not in conflict with national identity.

In the various chapters it has become clear that the incorporation of the constructivist factor of national identity into the realist external incentives model makes for a more comprehensive approach. The cases of Croatia and BiH have shown that the external incentives model lack explanatory power when conditionality is confronted with conflicting national identity. The aspects

conditionality has to possess in order to be effective are different when national identity is decisive, as we have seen perseverance has not and will almost certainly not work in BiH. However, measuring the effects of national identity has to be operationalized further. The criteria Freyburg and Richter have set up in order to evaluate the effects of national identity clearly need further work. Also, this research has shown that different rules apply to conditionality when met with national identity but *what* these rules are is not clear. In other words, the precise impact it has on conditionality and how it is to be tackled remains unclear. However, the two cases clearly show the potential usefulness of this methodology. Thus, the joining of the external incentives model and the theory of national identity has proven to be useful but fine-tuning is certainly needed.

Another shortcoming of this research is that the developments of both accession rounds have been looked at as two separated phenomena. The actions of the EU have been merely described of but have not been placed in the wider picture. Due to the limited scale of this research it has not been possible to look at the internal dynamics of the European Union itself. At the same time, the value of this research lies in the clear comparison, showing the different steps taken by the EU in the same Regional Approach and SAP in both countries. However, it's all in the word: political criteria are political in nature and therefore always have to be dealt with as such. Now that the steps have been made clear the next question is what the motivation of the EU was to make these steps. For instance, what were the effects of the financial crisis and the subsequent euro-crisis on the willingness to enlarge of both the EU-member states as well as the candidate countries? Additionally, the consequences of various the internal crises connected to the migrant crisis and growing anti-EU sentiment within the EU have to be connected with the enlargement policy in the Western Balkans. Most interestingly in this regard is the question of *why* the EU, with the United-Kingdom and Germany as initiators, suddenly found new incentives to pull BiH out of deadlock at the end of 2014.

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