

Promoting minority protection in CEE and the Western Balkans in the context of EU accession – a revised strategy?

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Abstract

The paper deals with Brussels' policies and instruments to promote the protection of minorities in countries willing to join the European Union. Being part of the Copenhagen criteria, the issue has been controversially discussed during preparations for the 2004 and 2007 enlargement, with so called 'double standards' and ad hoc policies being at the fore of criticism voiced towards the EU Commission's approach. With regard to the Western Balkans, it has been agreed that actions that aim at improving the life of minorities must be more tailor-made and take into account special features of the region, such as refugees return. Therefore, the author asks for lessons learned and revised tools that determine the EU's strategy towards applicants from the Western Balkans. It is argued that on the one hand the EU was eager to adopt its strategy in order to meet the special needs of the region. On the other hand analysis of progress reports and other official documents provides some evidence that concerning consistency the picture seems to be mixed. In terms of methodology, the paper draws on conditionality and Europeanization literature, describing a top-down (Eastern enlargement) and bottom-up (experience of new member states) model, leading to a second top-down round (South Eastern Europe). An analysis of official reports as well as a round-up of recent legal and policy developments on EU level, such as the mentioning of minority protection in the EU's primary law and the EU Parliament's initiatives, will be presented. The author finds that experience from the 2004 and 2007 enlargements did impact the current strategy to a certain extent. In the meantime, Brussels continues focusing on single minority groups, namely the Roma, remaining therefore somehow bound to its Eastern enlargement strategy. Therefore, the 'renewed consensus' on conditionality remains in question.

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Introduction

In the early 1990s the promotion of minority protection became an essential element of the European Union's democracy promotion in post-communist states. In the light of the breakdown of the communist block and the war in former Yugoslavia, the EU discovered minority protection as a mean of maintaining security and stability in the region and the whole European Union. In terms of promoting the protection of minorities in the context of the association and accession preparations of Central and Eastern European countries, conditionality was at the core of the European Union's strategy. Central to this approach were the Copenhagen criteria of 1993 requiring amongst others the rule of law, stable democratic institutions as well as human rights and respect for minorities.

While the EU is described to be because of the power asymmetry of the accession process much more influential in the field minority protection than the OSCE and the Council of Europe, the actual impact of the EU's conditionality on the situation of minorities living in Central and Eastern European countries has been controversially discussed throughout the past and current association and accession processes. For Central and Eastern Europe criticism related to discrepancies between the EU's lack of internal commitment to minority protection and the prominent role the issue played in the EU's external relations. Also the EU's requirements on minority protection were vague, creating uncertainty amongst the candidates and limiting the effectiveness of the EU's conditionality, not only because priorities changed over time and different conditions were imposed to single countries.

Against this background, this contribution discusses elements of the EU's promotion of minority protection in past and current countries hopeful to join the EU. It is argued that on the one hand the EU was eager to adopt its strategy in order to meet the special needs of the region. On the other hand analysis of progress reports and other official documents provides some evidence that concerning consistency the picture seems to be mixed. In terms of methodology, the paper draws on conditionality and Europeanization literature, describing a top-down (Eastern enlargement) and bottom-up (experience of new member states) model, leading to a second top-down round (South Eastern Europe). The author finds that experience from the 2004 and 2007 enlargements did impact the current strategy to a certain extent. In the meantime, Brussels continues focusing on single minority groups, namely the Roma, remaining therefore somehow bound to its Eastern enlargement strategy.

I. Conditionality and Copenhagen criteria

This section discusses central elements of the EU's basic instruments and texts for promoting the integration of minorities in countries willing to join the EU during accession processes.

I.1. Describing the EU's influence through conditionality as patterns of Europeanization

Conditionality is often described as a primary means of democracy promotion and Europeanization in post-communist states, given a clear incentive structure and the power asymmetry between the EU Commission and candidate states that leads to a substantial EU influence on structures and policy processes in the latter.¹ Steunenberg and Dimitrova define the EU's enlargement conditionality as "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 reforms."² The so called carrot and stick approach of conditionality involves the withdrawal of the benefits of accession and halting or slowing down the process, if candidate states' governments fail to progress with reforms when adapting to key features of membership such as a stable democratic regime.³

With regard to Europeanization⁴, the model has rather been confined to member states with little attention to accession countries and how they react, but there is a strong case for arguing that such countries, joining the EU and undergoing a fast-track adoption of EU legislation, are most likely to reveal intensive Europeanization.⁵ The EU here has had and has more opportunity for a formative influence than in states with established and functioning institutions.⁶ If applied to post communist applicant states, Europeanization in this sense is

¹ G. Sasse, *EU Conditionality and Minority Rights: Translating the Copenhagen Criterion into Policy*, EUI Working Paper RSCAS, No. 2005/162005, p. 4.

² B. Steunenberg, A. Dimitrova, *Compliance in the EU enlargement process: The limits of conditionality*, *European Integration Online Papers (EIoP)* 2007, Vol. 11, No. 5, p. 3; <http://eiop.or.at/eiop/texte/2007-005a.htm>, downloaded 04.01.2008.

³ *Ibidem*.

⁴ Generally, Europeanization stands for a process in which European rules, mechanisms and collective understandings interact as independent variables with given domestic structures, see J. Caporaso, James, *The Three Worlds of Regional Integration Theorie*, in: P. Graziano, M. Vink (eds.), *Europeanization: New Research Agendas*, Palgrave 2007, p. 27. Europeanization as an analytical concept is therefore used to examine the changes in domestic structures and policies that occur in response to policies and practices institutionalized at the European level, using misfit and conditionality as explanations of how Europeanization works, see e.g. C. Radaelli, *Whither Europeanization? Concept Stretching and Substantive Change*, *European Integration Online Papers* 4 (8), 2000; T. Börzel, T. Risse, *Conceptualizing the Domestic Impact of Europe*, in: K. Featherstone, C. Radaelli (eds.), *The Politics of Europeanization*, Oxford 2003, pp. 55–78; T. Risse, M. Green Cowles, J. Caporaso (eds.), *Transforming Europe: Europeanization and Domestic Change*, Ithaca NY 2003; A. Héritier, D. Kerwer, C. Knill, D. Lehmkuhl et al. (eds.), *Differential Europe: The European Union Impact on National Policy Making*, New York–Oxford 2001; B. Kohler-Koch, *Europäisierung: Plädoyer für eine Horizonterweiterung*, in: M. Knodt, B. Kohler-Koch (eds.), *Deutschland zwischen Europäisierung und Selbstbehauptung*, Frankfurt 2000, pp. 11–31.

⁵ G. Pridham, *Designing Democracy: EU Enlargement and Regime Change in Post-Communist Europe*, Palgrave 2005, p. 19.

⁶ *Ibidem*, p. 116.

often described as “export” of European values, institutions and norms from the West to the “importing” East of Europe, which not only leads to policy changes but also causes problems.⁷ In this regard and taken into account several enlargement rounds, it could be interesting to discuss a somehow extended model of Europeanization, based on Börzel’s two-way process⁸: There could be a first top-down dimension, describing the EU’s minority protection strategy of the 2004 and 2007 enlargement rounds. This is followed by a bottom-up round in which the EU formulated lessons learned and representatives of new member states hoped to upload minority-related aims to the EU level. As a third element, another top-down round could be described, meaning the EU’s strategy towards current and future candidate countries.

II.2. Copenhagen criteria and other conditions imposed on applicant

The EU’s *acquis communautaire* which, based on negotiations, has to be adopted by the candidate countries before their accession to the EU, was extended by an ‘enlargement *acquis*’ when discussions relating to the accession of post-communist states started.⁹ For the candidate countries of the 2004 and 2007 enlargement rounds, the approach developed in the Agenda 2000¹⁰ on the basis of the accession criteria established in 1993 by the Copenhagen European Council applied.¹¹ These stipulate that membership requires that the applicant country ensures the ‘stability of institutions guaranteeing democracy, the rule of law, human rights, and the respect for and protection of minorities.’ When the Treaty of Amsterdam entered into force in 1999, the political criteria defined at Copenhagen were for the most part enshrined as a constitutional principle in the Treaty on European Union (TEU).

⁷ H. Schubert (ed.), *Europäisierung – Begriff, Idee und Verwendung im interdisziplinären Diskurs*, Forschungsverband Ost- und Südosteuropa, forost Arbeitspapiere Nr. 38, December 2006, p. 17.

⁸ T. Börzel, *Pace-Setting, Foot-Dragging, and Fence-Sitting: Member State Responses to Europeanization*, “*Journal of Common Market Studies*” 2002, No. 40 (2), pp. 193–214.

⁹ A. Dimitrova, *Enlargement driven change and post communist transformations: A new perspective*, in: A. Dimitrova (ed.), *Driven to Change: The European Union’s Enlargement Viewed from the East*, Manchester University Press 2004, p. 8 f, the ‘enlargement *acquis*’ includes amongst others requirements for horizontal administrative reform, regionalization, reform of the judiciary, ethnic minorities’ rights and border treaties.

¹⁰ European Commission (1997) *Agenda 2000 - Commission Opinion on Slovakia’s Application for Membership of the European Union*, DOC/97/20, Brussels, 15 July 1997.

¹¹ COM (2001) 252 final: 5. The criteria read as follows: Any country seeking membership of the European Union (EU) must conform to the conditions set out by Article 49 and the principles laid down in Article 6(1) of the Treaty on European Union. Relevant criteria were established by the Copenhagen European Council in 1993 and strengthened by the Madrid European Council in 1995. To join the EU, a new Member State must meet three sets of criteria: – political: stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; – economic: existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union; – acceptance of the Community *acquis*: ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union, see http://europa.eu/scadplus/glossary/accession_criteria_copenhagen_en.htm.

Although the European Union does not provide a ‘minority rights policy’, some scholars observed, not least as a consequence of the latest enlargement preparations, a stronger focus of the EU on minorities, describing an ‘internalisation of the protection of minorities in the EU system’.¹² An obvious example of this development is the mentioning of respect for the rights of persons belonging to minorities in the text of the EU constitution draft and the to-be-ratified Lisbon treaty (Art. 2): ‘The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the *rights of persons belonging to minorities*. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail’ [emphasis added]. The provision was agreed upon not in the drafting stage for the Treaty establishing a Constitution for Europe but at the Intergovernmental Conference under the Italian Presidency at the end of 2003 and has been criticised for remaining ambiguous and rather modest, despite the actual success of being mentioned in the EU’s primary law.¹³ Nevertheless, the fact that Hungary played a decisive role when the issue was discussed in the European Convention and later on at the Intergovernmental Conference,¹⁴ could be a case for arguing that new member states (indeed, even before their accession) up-loaded their attempt to include minority protection in the EU’s primary law to the European level. In addition, one of the most important arguments for including minority protection in the EU’s primary law was that the EU should be wedded to its position in the accession process,¹⁵ therefore, at least legally, putting an end to double standards.

Article 49 of the TEU stipulates that “[a]ny European State which respects the principles set out in Article 6(1) may apply to become a member of the Union.” In the meantime Art. 6(1) does not mention minority protection. Nevertheless, fulfilment of the political Copenhagen criteria is a precondition for opening accession negotiations, but in the meantime the Copenhagen criteria do not offer a definition of what constitutes a minority. In theory the decision was left up to the candidate countries, but a definition can somehow be taken from various Commission Opinions and Regular Reports: In general, the Commission refers to

¹² G. Toggenburg, A rough orientation Through a Delicate Relationship. The EU’s Endeavours for (its) Minorities, in *European Integration Online Papers (EioP)*, Vol. 4 (2000) No. 16, p. 25, available <http://www.eiop.or.at/eiop/texte/2000-016a.htm> (accessed 18 January 2008).

¹³ G. Toggenburg, A remaining share or a new part? The Union’s role vis-à-vis minorities after the enlargement decade, *EUI Working Paper LAW No. 2006/15*, p. 7, who amongst others criticises the fact that the provision is not followed by any policy provision or competence base in the text.

¹⁴ B. Vizi, The Unintended Legal Backlash of Enlargement? The Inclusion of the Rights of Minorities in the EU Constitution, in: *Regio. Minorities, Politics, Society*, Vol. 8, 2005, p. 89.

¹⁵ B. Vizi, The Unintended Legal Backlash of Enlargement? The Inclusion of the Rights of Minorities in the EU Constitution, in: *Regio. Minorities, Politics, Society*, Vol. 8, 2005, p. 90.

national minorities while the European Parliament in several texts emphasized the need also to protect ethnic, linguistic, religious and other minorities.¹⁶

With the expansion of its democracy agenda and in the light of the EU's concerns about the state of democracy in future member states, the Commission developed new instruments for furthering conditionality.¹⁷ These included: the Regular Reports (the annual monitoring reports of the Commission on candidate countries that started in 1998), the complementary Accession Partnerships and PHARE Democracy Programme and twinning arrangements with individual member states. The EU also used demarches as well as statements by the European Parliament to show its opinion on reforms in the candidate countries, e.g. on Slovakia under the Mečiar government (RFE/RL 1996).¹⁸

II. Minority protection in the context of past enlargement rounds

Given this introduction to the theoretical setting and to what the EU's minority protection policy is about, the following section will provide an overview about the EU's progress reports issued for two critical countries, Estonia and Slovakia. Furthermore, a round-up of findings with regard to lessons that have been learned from this enlargement round will be presented.

II. 1. Integration of minorities as a measure of Europeanization?

In terms of democratic conditionality, scholars agreed that the somewhat informal and ad hoc approach the EU used in the 1980s towards states like Spain, Portugal and Greece that arose amongst others due to the inability to define democracy would not suffice for the CEECs and Western Balkan countries.¹⁹ In this sense, the Commission adopted a "checklist approach" as there supposedly was a lack of strategy and coherence in the EU's approach towards the CEECs.²⁰ Despite the fact that the political aspects of the Copenhagen criteria played a prominent role before the first invitations to the CEECs in 1997 to negotiate accession, the issue was treated as country-specific. Therefore, in terms of minority protection as part of the political conditions set by the EU, Brussels's conditionality in post-communist states is described as being based on a cumulative effect of different international institutions, with the

¹⁶ D. Kochenov, *Commission's Approach to Minority Protection during the Preparation of the EU's Eastern Enlargement: Is 2 Better than the Promised 1?*, European Diversity and Autonomy Papers EDAP 02/2007, p. 18 f.

¹⁷ G. Pridham, *The Scope and Limitations of Political Conditionality: Romania's Accession to the EU*, *Comparative European Politics*, 2007 (5), p. 352.

¹⁸ M. Ilcheva, *Preparing for the New Minorities in Europe: The EU Influence on National Minority Protection in Romania and Slovakia*, Jean Monnet/Robert Schuman Paper Series Vol.5, 2005, No. 25, p. 7.

¹⁹ G. Pridham, *Designing Democracy: EU...*, p. 38.

²⁰ *Ibidem*, p. 41.

outcomes depending on domestic political constellations and pressures.²¹ In this regard, the EU somehow downloaded a hardly defined scheme of minority protection to the applicants, with its success being based on the power asymmetry of the accession process and the absolute intention of the post-communist states to become EU members.

In this regard, many scholars agreed that the political conditions set by the EU do not match with basic principles of an effective conditionality, namely credibility, consistency and continuity over time.²² In addition, it is often said that conditionality referring to the *acquis communautaire* i.e. the implementation of the EU's primary and secondary law into national legislation is more effective than conditionality related to the 'democratic *acquis*'.²³ Nevertheless, the completion of the accession processes of all applicants of the 2004 and 2007 enlargement rounds provides evidence that these states remained committed to its obligations, despite the mentioned concerns. So why, from a political science point of view, do states comply? Two major explanations were given by Schimmelfennig and Sedelmeier in 2005. According to them, rationalists argue that candidates accept the high costs and try to stick to Brussels's conditions related to EU accession preparations because costs are small compared to the perceived benefits of EU membership (logic of consequences)²⁴ The cost-benefit calculations depend on four factors, according to Schimmelfennig and Sedelmeier: Clarity of conditions, size and speed of incentives related to EU membership, credibility of sanction threats and promises, and the size of adaptation costs.²⁵ According to the social learning model compliance with EU norms and values by a candidate state depends on the degree to which the collective identity and norms and values of the state correspond to EU standards (logic of appropriateness).²⁶

II. 2. Examples from Estonia and Slovakia and lessons learned

Overall, in past enlargement rounds, there were no clear benchmarks reflecting a minority protection system inherent to the EU and its member states. Therefore it is suitable to check

²¹ G. Sasse, *EU Conditionality and Minority Rights: Translating the Copenhagen Criterion into Policy*, EUI Working Paper RSCAS, No. 2005/162005, p. 18. Pressure might be related e.g. to media debates, timing and the question whether a government's standing was affected by a negative report of the Commission.

²² G. Sasse, *EU Conditionality and Minority Rights: Translating the Copenhagen Criterion into Policy*, EUI Working Paper RSCAS, No. 2005/162005, p. 4.

²³ F. Schimmelfennig, U. Sedelmeier (eds.), *The Europeanization of Central and Eastern Europa*, Ithaca NY: Cornell University Press, 2005, pp. 212 f.

²⁴ F. Schimmelfennig, U. Sedelmeier (eds.), *The Europeanization of Central and Eastern Europa*, Ithaca NY: Cornell University Press, 2005, p. 10.

²⁵ F. Schimmelfennig, U. Sedelmeier (eds.), *The Europeanization of Central and Eastern Europa*, Ithaca NY: Cornell University Press, 2005, pp. 12 f.

²⁶ F. Schimmelfennig, U. Sedelmeier (eds.), *The Europeanization of Central and Eastern Europa*, Ithaca NY: Cornell University Press, 2005, p. 18.

the Progress Reports in order to set up a list of requirements the candidate countries had to fulfil as they tracked legal reforms in fields relevant for the protection of minorities. Generally, the reports referred to ‘international’ or ‘European standards’ of the Council of Europe or the OSCE without further specification (see e.g. 1998 Report on Estonia). Principally, developments on citizenship, naturalization procedures, language rights and electoral laws, the establishment of institutions within governments, parliaments or at local level managing minority issues and the launch of government programmes to address minority needs were observed.²⁷ As Hughes and Sasse further summarized trends were evaluated by numerical benchmarks, such as the number of a minority granted citizenship, number of requests for naturalization, the pass rate for language or citizenship tests, the number of school or classes taught in the state and minority languages, the number of teachers trained to teach in the state and minority languages or the extent of media and broadcasting in minority languages.²⁸ Progress was measured by using formulations such as ‘significant progress’, ‘considerable efforts’ or ‘continuing commitment’.²⁹

The EU used two main methods to monitor the candidate countries’ compliance with the Copenhagen criteria: Evaluating the legislative processes and monitoring the systematic adaptation by assessing implementation.³⁰ Central to the EU Commission’s monitoring task were the annual Regular Reports that followed in 1997 on from the Opinions. Through the reports which were based on a formulaic structure and were the result of documentation from many different sources such as the candidate countries, the OSCE and the Council of Europe and NGOs the EU channelled priorities as well as concerns and results in the field of minority protection. In the meantime only the conditions of two minority groups, Roma minorities in Bulgaria, the Czech Republic, Hungary, Romania and Slovakia and the Russo phone minority in Estonia and Latvia, were consistently stressed, while other sizeable groups such as the Hungarians in Romania and Slovakia were only marginally mentioned.³¹ In the following a short overview of key findings of the Commission’s 1998-2002 progress reports for Slovakia and Estonia as well as the comprehensive monitoring reports of 2003 with respect to minority

²⁷ J. Hughes, G. Sasse G., *Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs*, *Journal on Ethnopolitics and Minority Issues in Europe*, Issue 1/2003, p. 15.

²⁸ *Ibidem*.

²⁹ *Ibidem*.

³⁰ J. Hughes, G. Sasse G., *Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs*, *Journal on Ethnopolitics and Minority Issues in Europe*, Issue 1/2003, p. 14.

³¹ *Ibidem*.

related issues will be given in order to provide a picture of how the Commission's evaluations of progress in the field of minority protection looked like.³²

Estonia

Short-term priorities for Estonia were an improved integration of non-Estonian nationals and the simplification of the naturalisation process, as well as better access to Estonian language teaching for non-Estonian speakers.

In its 1998 report the Commission criticized the postponement of the adoption of a law providing children with stateless parents born in 1992 and later with Estonian citizenship, while amendments regarding residence permits and special passports for non-citizens were welcomed.³³ The Commission remarked that the rights of the Russian-speaking minority continued to be observed and safeguarded with some restrictions.³⁴ Efforts to improve the teaching of Estonian to non-citizens as well as the parliament's document on the integration of non-Estonians were mentioned as setting out guidelines for implementing a national integration programme.³⁵ In the meantime the report asked for continuing public administration reform and further promotion of Estonian language learning.³⁶ In its 1999 report the Commission found that there were some improvements such as the amendment of a law on citizenship with regard to stateless children and some steps to assist the integration of non-Estonian speaker.³⁷ In the meantime further efforts were requested and the Estonian language law was seen as a step backwards to the political integration of non-citizens,³⁸ while the government action plan on the integration of non-Estonians into the Estonian society was welcomed.³⁹ In 2000 the report stated that there have been some amendments of the language law to adjust it to the requirements of the Europe Agreement,⁴⁰ and that an integration

³² A review of the short-term and long-term priorities defined by the Commission as well as an evaluation of the target countries's efforts to fulfil these requirements can be found at <http://europa.eu/scadplus/leg/en/s40016.htm> (accessed 15 May 2008).

³³ European Commission (1998) Regular Report from the Commission on Estonia's progress towards accession, p. 11.

³⁴ Ibidem.

³⁵ Ibidem.

³⁶ European Commission (1998) Regular Report from the Commission on Estonia's progress towards accession, p. 12.

³⁷ European Commission (1999) Regular Report from the Commission on Estonia's progress towards accession, Regular Report – 13/10/99, p. 13.

³⁸ European Commission (1999) Regular Report from the Commission on Estonia's progress towards accession, Regular Report – 13/10/99, p. 16.

³⁹ European Commission (1999) Regular Report from the Commission on Estonia's progress towards accession, Regular Report – 13/10/99, p. 14.

⁴⁰ European Commission (2000) Regular Report from the Commission on Estonia's progress towards accession, Regular Report, 8 November 2000, p. 20.

programme for non-Estonians had been adopted.⁴¹ The Commission found that Estonia continued to fulfil the Copenhagen political criteria and that it has addressed most of the short-term priorities of the 1999 Accession Partnership in this area, including the introduction of amendments to the language law, the adoption of the State Integration Programme for non-Estonians or the reinforcement in the training of judges.⁴² In 2001 the Commission highlighted that Estonia continued to develop the national integration programme.⁴³ It was stated that Estonia made considerable progress in further guarantying the respect and protection of minorities.⁴⁴ According to the Commission Estonia continued to make progress in implementing concrete measures for the integration of non-citizens and continues addressing the short and medium-term priorities.⁴⁵ In its 2002 report the Commission found the naturalisation procedure regulated by the Law on Citizenship was generally in line with international standards but that greater efforts should be made to address the particular conditions prevailing in Estonia.⁴⁶ Implementation of the integration programme appeared to have continued satisfactorily, according to the Commission.⁴⁷ In the meantime the report stated that Estonia should continue to ensure the meeting of language requirements of Russian-speakers in the public services.⁴⁸ Amongst others it was also positively mentioned that Estonia encouraged the further integration of non-citizens by various measures and programmes.⁴⁹ According to the monitoring report of 2003 full alignment with the acquis' requirements in the field of anti-discrimination was still lacking and the naturalisation process had to be speeded up in order to further promote the integration of the Russian minority.⁵⁰ Medium-term priorities for Estonia were the continued integration of non-citizens by improving training in Estonian for Russian speakers in primary and secondary schools and organising courses for adults as well as the adoption of additional measures to speed up the process of naturalisation. The 1999 progress report found that Estonia kept commitment to a

⁴¹ European Commission (2000) Regular Report from the Commission on Estonia's progress towards accession, Regular Report, 8 November 2000, p. 18.

⁴² Ibidem.

⁴³ European Commission (2001) Regular Report from the Commission on Estonia's progress towards accession, Regular Report, Brussels, 13 November 2001, SEC(2001) 1747, p. 22.

⁴⁴ European Commission (2001) Regular Report from the Commission on Estonia's progress towards accession, Regular Report, Brussels, 13 November 2001, SEC(2001) 1747, p. 24.

⁴⁵ Ibidem.

⁴⁶ European Commission (2002) Regular Report from the Commission on Estonia's progress towards accession, Regular Report, Brussels, 9 October 2002, SEC(2002) 1402, p. 30.

⁴⁷ European Commission (2002) Regular Report from the Commission on Estonia's progress towards accession, Regular Report, Brussels, 9 October 2002, SEC(2002) 1402, p. 32.

⁴⁸ European Commission (2002) Regular Report from the Commission on Estonia's progress towards accession, Regular Report, Brussels, 9 October 2002, SEC(2002) 1402, p. 33.

⁴⁹ European Commission (2002) Regular Report from the Commission on Estonia's progress towards accession, Regular Report, Brussels, 9 October 2002, SEC(2002) 1402, p. 34.

⁵⁰ European Commission (2003) Comprehensive monitoring report on Estonia's preparations for membership, Brussels, p. 35.

policy of greater integration of non-citizens, also with regard to stateless children. According to the Commission steps had been taken to enhance the learning of Estonian in schools. In 2000 the Commission required the implementation of the national integration programme for non-Estonians to be monitored and in 2001 the report described some improvements with respect to the teaching of Estonian to non-Estonian speakers. In 2002 the Commission found that integration is continuing but that efforts were needed to ensure compliance of the language legislation's implementation with international obligations. In 2003 the Commission highlighted that further efforts were needed in the education area especially with regard to the training of bilingual teachers.⁵¹

Slovakia

For Slovakia at the beginning of the accession process the adoption of legislative provisions on the use of minority languages and related implementing measures were defined as short-term priorities.

In its opinion on Slovakia's application for membership of the European Union Brussels asked for improvement of the right of language use of the Hungarian minority and for comprehensive improvement of integration of the Roma into the Slovakian society.⁵² In its 1998 report⁵³ the Commission claimed that the Roma minority continued to suffer discrimination and that there had been no progress concerning minority language legislation and in the implementation of the Basic Treaty with Hungary.⁵⁴ In the meantime the Commission highlighted positively that the Slovak government had taken several initiatives in support of Roma families. In the report published in October 1999 the Commission remarked that legislation on minority languages had been adopted. Also it was highlighted that the Slovak authorities made significant progress, amongst others by appointing a Deputy Prime Minister for Human Rights, National Minorities and Regional Development who belonged to the Hungarian Coalition Party.⁵⁵ On the other hand Roma children continued to be over represented in schools for retarded children and other forms of school segregation were

⁵¹ Ibidem.

⁵² European Commission (1997) Agenda 2000 - Commission Opinion on Slovakia's Application for Membership of the European Union, DOC/97/20, Brussels, 15 July 1997, p. 22.

⁵³ The Commission paid special attention to the fact that a new Slovak government was in place and that the government had the opportunity to demonstrate Slovakia's commitment to the respect for human rights.

⁵⁴ European Commission (1998) Regular Report from the Commission on Slovakia's progress towards accession, p. 12.

⁵⁵ European Commission (1999) Regular Report from the Commission on Slovakia's progress towards accession, Regular Report – 13/10/99, p. 16.

reported.⁵⁶ In the meantime the Commission found at the next page of the same report that the government had taken significant steps on Roma issues and that programmes had been launched to support the education of Roma and fulfilled the Copenhagen political criteria, while at the same page the Commission asked for continued efforts to improve the situation of the Roma.⁵⁷ In the November 2000 report it was highlighted that the strategy for improving the situation of the Roma was not sufficiently operational and its budget allocation was insufficient.⁵⁸ No progress was recorded as far as the daily life of the Roma and the under-representation of Roma students in the higher educational system was concerned.⁵⁹ In the report published in November 2001 it was mentioned that there has been little tangible improvement in the situation of the Roma, e.g. as regards the housing conditions in the ‘settlements’, while problems with project funding delayed implementation.⁶⁰ In the meantime it was welcomed that the government largely agreed to the demands of the then ruling party SMK, representing the Hungarian minority and that in 2001 Slovakia ratified the European Charter of Regional and Minority Languages.⁶¹ In 2002 the Commission highlighted that the recognised minorities in Slovakia continued to be comparatively well integrated in Slovak society, with the exception of the Roma minority, while in the meantime the Commission found that considerable further steps were taken to implement the Roma strategy aimed at improving the difficult situation the Roma community was facing.⁶² It was highlighted that the strategy included a complex and ambitious programme for Roma settlements,⁶³ but that also proper implementation remained difficult due to co-ordination problems between ministries.⁶⁴ In addition, like in 2001, the Commission hinted to the difficult housing conditions of the Roma and repeated concerns over the under-representation of Roma students in the education system and the over-representation in school for retarded children.⁶⁵ These aspects as well as high unemployment led to deepened social exclusion, the

⁵⁶ European Commission (1999) Regular Report from the Commission on Slovakia’s progress towards accession, Regular Report – 13/10/99, p. 16.

⁵⁷ European Commission (1999) Regular Report from the Commission on Slovakia’s progress towards accession, Regular Report – 13/10/99, p. 18.

⁵⁸ European Commission (2000) Regular Report from the Commission on Slovakia’s progress towards accession, Regular Report, 8 November 2000, p. 21.

⁵⁹ Ibidem.

⁶⁰ European Commission (2001) Regular Report from the Commission on Slovakia’s progress towards accession, Regular Report, Brussels, 13 November 2001, SEC(2001) 1754, p. 22.

⁶¹ Ibidem.

⁶² European Commission (2002) Regular Report from the Commission on Slovakia’s progress towards accession, Regular Report, Brussels, 9 October 2002, SEC(2002) 1410, p. 30.

⁶³ Ibidem.

⁶⁴ European Commission (2002) Regular Report from the Commission on Slovakia’s progress towards accession, Regular Report, Brussels, 9 October 2002, SEC(2002) 1410, p. 31.

⁶⁵ Ibidem.

Commission concluded, adding that these issues need to continue to be tackled as a priority.⁶⁶ In its 2003 monitoring report the Commission criticised Slovakia for only very partially transposing the EC legislation on anti-discrimination matters, especially as regard race or ethnic origin.⁶⁷ The Commission found that despite continuous efforts the situation of the Roma minority remained difficult and that social exclusion and discrimination in education, employment and access to public services as well as bad housing and infrastructure conditions prevailed.⁶⁸

Summary: General criticism of the EU's approach towards promoting minority protection

During the association and accession process the EU asked most countries of Central and Eastern Europe to promote an overall inclusion of minorities into the economic, political and social life while in the meantime they were also requested to advance diversity, i.e. protecting special characteristics of minorities. As for the Baltic States, the emphasis was rather on equal opportunities for the Russo phone group, e.g. by promoting linguistic skills.

This implies that despite the fact that the political aspects of the Copenhagen criteria played a prominent role before the first invitations to the CEECs in 1997 to negotiate accession the issue was treated as country-specific. Meeting the EU's conditions has been described as being quite complicated, mainly because of the unprecedented salience of political conditionality for post-communist applicants.⁶⁹ Furthermore, it has often been claimed by accession states and scholars that the political conditions were only vaguely specified by the EU side, reflecting the lack of uniformity in practice and consensus in principle among existing member-states on fundamental constitutional issues such as regional devolution and provisions for minority rights.⁷⁰

In addition, it was claimed that there was an absence of continuity and coherence in the EU's monitoring mechanism as the reports were characterized by ad hocism and no consistency of evaluation.⁷¹ For example, the medium-term priorities for Slovakia mentioned the fostering

⁶⁶ European Commission (2002) Regular Report from the Commission on Slovakia's progress towards accession, Regular Report, Brussels, 9 October 2002, SEC(2002) 1410, p. 32.

⁶⁷ European Commission (2003) Comprehensive monitoring report on Slovakia's preparations for membership, Brussels, p. 33.

⁶⁸ European Commission (2003) Comprehensive monitoring report on Slovakia's preparations for membership, Brussels, p. 34.

⁶⁹ J. Batt, 'Fuzzy Statehood' versus Hard Borders: the impact of EU enlargement on Romania and Yugoslavia, ESRC "One Europe or Several?" Programme, Working Paper 46/02, 2002, p. 12.

⁷⁰ J. Batt, 'Fuzzy Statehood' versus Hard Borders: the impact of EU enlargement on Romania and Yugoslavia, ESRC "One Europe or Several?" Programme, Working Paper 46/02, 2002, p. 12; F. Schimmelfennig, U. Sedelmeier (eds.), *The Europeanization of Central and Eastern Europe*, Ithaca NY: Cornell University Press, 2005, p. 32.

⁷¹ J. Hughes, G. Sasse, *Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs*, *Journal on Ethnopolitics and Minority Issues in Europe*, Issue 1/2003, p. 16.

and enhancing of policies and institutions which protect minority rights. Only in its 2001 report the Commission found that some improvements had been made to the law on minority languages.⁷²

As Hughes and Sasse further criticized, the EU privileged the Russo phone and Roma minorities in its reports as they were of relevance for keeping good relations with its main energy supplier and for limiting migration issues.⁷³ Also the fact that the situation of the Roma was sharply criticized in some countries while at the same time the reports highlighted the ongoing fulfilment of the Copenhagen criteria indicates that minority protection was not one of the EU's main concerns.⁷⁴ The reports faced criticism as they illustrate the EU lack of clear benchmarks to measure progress as the emphasis is rather on legal reforms than the evaluation of implementation.⁷⁵

The above mentioned also led to a lively debate in Central and Eastern European states about what kind of 'Europe' the countries were acceding to in terms of political and institutional design.⁷⁶ In addition, the Brussels-driven democratisation has found many critics for its top-down approach.⁷⁷

III. New tools and policy goals determining the EU's strategy towards current applicants

Already back in 1997, the Council agreed on a gradual approach regarding to the application of conditionality in the EU's relation with Western Balkans countries.⁷⁸ Conditionality is described as a developing process and requires amongst others non-discriminatory treatment of persons belonging to minorities as well as refugee return. In an annex to the Council conclusions a list of criteria is defined, including the right for minority groups to maintain own educational institutions and to use their own language before courts and public

⁷² European Commission (2001) Regular Report from the Commission on Slovakia's progress towards accession, Regular Report, Brussels, 13 November 2001, SEC(2001) 1754, p. 22.

⁷³ Ibidem.

⁷⁴ J. Hughes, G. Sasse, Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs, *Journal on Ethnopolitics and Minority Issues in Europe*, Issue 1/2003, p. 17.

⁷⁵ J. Hughes, G. Sasse, Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs, *Journal on Ethnopolitics and Minority Issues in Europe*, Issue 1/2003, p. 15.

⁷⁶ J. Batt, 'Fuzzy Statehood' versus Hard Borders: the impact of EU enlargement on Romania and Yugoslavia, ESRC "One Europe or Several?" Programme, Working Paper 46/02, 2002, p. 12.

⁷⁷ S. Jora, International Organizations and Democratization models: the case of EU accession of Romania, CDAMS Discussion Papers 06/10E, 2006, p. 17.

⁷⁸ Council Conclusions on the Application of Conditionality with a view to developing a Coherent EU Strategy for the Relations with the Countries in the Region", in *Bulletin EU*, 4 (1997), p. 137.

authorities.⁷⁹ The Stabilisation and Association Process (SAP) combines this graduated approach with a country-to-country approach which aims at achieving greater flexibility in order to respond to country-specific needs.⁸⁰

In November 2006, the Commission agreed on a renewed consensus on the enlargement of the European Union, which has been adopted by the EU head of states on month later.⁸¹ The consensus aims at fostering fair and stricter conditionality and points to lessons learned from previous enlargements, including stronger emphasis on political dialogue and a systematic use of benchmarks.

III.1. From top-down to bottom-up back to top-down?

The so-called ‘double standards’ on minority protection between member and candidate countries and among the candidates themselves, faced criticism within EU institutions, namely the European Parliament. For example the Intergroup for traditional minorities of the European Parliament, not least under influence by Hungarian MEPs, criticized the fact that minority standards that are to be fulfilled by EU candidates are not adhered to by the ‘old European states’, namely France and Greece, and that these double standards have further led to the new EU members threatening to move away from already achieved minority standards.⁸² In this regard, there is a case for arguing that there has been limited bottom-up in terms of uploading criticism and lessons learned both by EU institutions and new member states.

This mentioned and pointing to the renewed consensus on enlargement and conditionality, it could be argued that the down-loading of conditions with respect to minority protection towards countries from the Western Balkans gained a new quality. As regards the EU’s commitment to minority protection in third countries, the European Commission recently emphasized that it will continue to promote the values of non-discrimination and equal opportunities in its enlargement policy, with special attention to be paid to the rights of persons belonging to linguistic or cultural minorities.⁸³

⁷⁹ See G. Toggenburg, A remaining share or a new part? The Union’s role vis-à-vis minorities after the enlargement decade, EUI Working Paper LAW No. 2006/15, p. 4; see below.

⁸⁰ Ibidem.

⁸¹ See IP/06/1523.

⁸² See http://www.living-diversity.eu/News/Eintrag/2007/12/6_Eintrag_1.html (accessed 10 March 2008) During the accession processes the Parliament was also critical about the progresses in candidate states as regards minority protection that had been described by the Commission, see e.g. for the case of Romania Pridham, G., The Scope and Limitations of Political Conditionality: Romania’s Accession to the European Union, Comparative European Politics, 2007 (5), p. 354.

⁸³ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Non-discrimination and equal opportunities: A renewed commitment, SEC(2008) 2172, Brussels, 2 July 2008 (COM(2008) 420 final), p. 7.

Nevertheless, the experience of the 2004 and 2007 enlargements did not result in the elaboration of any serious minority protection standard that could be used by the EU both internally and externally, especially during the preparation of the enlargements to come.⁸⁴

III.2. Renewed consensus and strict conditionality

To date, Croatia and the Former Yugoslav Republic of Macedonia are the only countries of the Western Balkans region that have officially obtained the status of an EU candidate state. A revised conditionality policy for the region, following a ‘graduated approach’ specific to each country and established by the EU Council’s conclusions on the application of conditionality in the Western Balkans as of 29 April 1997,⁸⁵ has been described: Accession negotiations can only start when a number of more detailed conditions are fulfilled.⁸⁶ In this regard, the EU is provided with a sort of checklist in order to examine compliance with various requirements, namely the right of the minorities to establish and maintain their own educational, cultural and religious institutions, organisations or associations, adequate opportunities for minorities to use their own language before courts and public authorities as well as adequate protection of refugees and displaced persons returning to areas where they represent an ethnic minority.⁸⁷ Also, the EU heads of states and governments declared in 2003 at the EU-Western Balkans Summit that they all share the value of respecting “minority rights” (Thessaloniki Declaration).⁸⁸ Indeed, several programmes and initiatives by the EU and cooperating institutions show that Brussels – compared to its strategy towards the CEECs – more openly addresses the issue of minority protection vis-à-vis candidates and other states

⁸⁴ D. Kochenov, Commission’s Approach to Minority Protection during the Preparation of the EU’s Eastern Enlargement: Is 2 Better than the Promised 1?, *European Diversity and Autonomy Papers EDAP 02/2007*, p. 10. Once post-communist countries joined the EU in 2004 and 2007, an approach to minority protection in those countries based on conditionality had to be abandoned, and European attempts to stimulate ethno-cultural diversity in the new member states have instead emphasized the themes of social inclusion, anti-discrimination and equal opportunities, see P. Vermeersch, *Ethnic Minority Protection and Anti-discrimination in Central Europe Before and After EU Accession: the Case of Poland*, in *Journal on Ethnopolitics and Minorities in Europe*, 1/2007, p. 2. Not least, there were fears that due to the fact that there is no EU minority protection system, the reforms conducted during accession preparations that led to a certain degree of minority protection in the sense of promoting special linguistic or cultural rights could be threatened by the principle of equal treatment or non-discrimination which is fundamental to the functioning of the EU internal market.

⁸⁵ See Council “Conclusions on the Application of Conditionality with a view to developing a Coherent EU Strategy for the Relations with the Countries in the Region”, in: *Bulletin EU*, 4 (1997).

⁸⁶ G. Toggenburg, *A remaining share or a new part? The Union’s role vis-à-vis minorities after the enlargement decade*, *EUI Working Paper LAW No. 2006/15*, pp. 3 f, these include the credible offer to and a visible implementation of real opportunities for displaced persons (including so called “internal migrants”) and refugees to return to their places of origin, absence of harassment initiated or tolerated by public authorities, absence of generally discriminatory treatment and harassment of minorities by public authorities absence of discriminatory treatment and harassment of independent media.

⁸⁷ G. Toggenburg, *A remaining share or a new part? The Union’s role vis-à-vis minorities after the enlargement decade*, *EUI Working Paper LAW No. 2006/15*, p. 4, who describes the second-generation conditionality as being ‘fine-tuned’.

⁸⁸ See Council document Nr. 10229/03, Thessaloniki, 21 June 2003, Par. 1.

from the Western Balkans region. For example the European Initiative for Democracy and Human Rights (EIDHR) identified combating racism, xenophobia, and discrimination against minorities as thematic and funding priorities.⁸⁹ Also the Stability Pact for South Eastern Europe which was adopted in 1999 imposes certain obligations on the signatory states, amongst others full respect of rights and freedoms of persons belonging to national minorities as well as the preservation of the multinational and multiethnic diversity of countries in the region.⁹⁰

In its enlargement strategy for 2006 and 2007⁹¹ the EU Commission highlighted that rigorous conditionality is applied to all candidates and that progress depends on political reforms.⁹² In the report, it introduced benchmarks as a new tool, being a result of lessons learnt from the fifth enlargement round.⁹³ Furthermore, it was pointed out that the political criteria will be fed into the negotiation process and that political issues will be addressed in the chapter on Judiciary and Fundamental Rights (chapter 23).⁹⁴ The enlargement strategy for 2007 and 2008⁹⁵ includes a chapter about the renewed consensus on enlargement, describing the enlargement process as contributing to the promotion of European values,⁹⁶ whereas the 2008-2009⁹⁷ report does not address the issue or the role of conditionality specifically.

Croatia

The 2006 progress report described slow implementation of the Constitutional Law on National Minorities (CLNM) and problems relating to the representation of minorities in public institutions.⁹⁸ Furthermore, it is mentioned that some progress has been made with regard to education provided for the Serb minority language and script, while generally there is a lack of political will to foster employment.⁹⁹ The text also reports on negative

⁸⁹ The Initiative was adopted by Council Regulation (EC) No 976/1999 (29 April 1999), laying down the requirements for the implementation of Community operations, see http://europa.eu.int/eur-lex/pri/en/oj/dat/1999/l_120/l_12019990508en00080014.pdf.

⁹⁰ Chapter 1, see <http://www.stabilitypact.org/constituent/990610-cologne.asp>.

⁹¹ COM(2006) 649, Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2006 – 2007 Including annexed special report on the EU's capacity to integrate new members, Brussels, 8 November 2006.

⁹² COM (2006) 649, p. 3.

⁹³ COM (2006) 649, p. 6, in the view of the Commission, they provide incentives for candidates to undertake necessary reforms at an early stage and they are measurable.

⁹⁴ *Ibidem*.

⁹⁵ COM(2007) 663 final, Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2007 – 2008, Brussels, 6 November 2007.

⁹⁶ COM(2007) 663 final, p. 9.

⁹⁷ COM(2008) 674 final, Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2008 – 2009, Brussels, 5 November 2008.

⁹⁸ SEC(2006) 1385, Commission Staff Working Document, Croatia 2006 Progress Report {COM(2006) 649 final}, Brussels, 8 November 2006, p. 11.

⁹⁹ *Ibidem*.

stereotyping in the press and in TV as well as a lack of sources for schooling in Serbian language.¹⁰⁰ In addition, the Commission criticised real obstacles to the sustainable return of Serb refugees and the lack of a comprehensive anti-discrimination strategy.¹⁰¹ With regard to the Roma minority, the report described slow progress with ongoing daily discrimination and high unemployment.¹⁰² The paragraph on chapter 23 of the *acquis communautaire* (Judiciary and fundamental rights), referring to the paragraph on political conditions, simply stated that there was some progress in the area of minority rights and that a number of important challenges remained.¹⁰³

The 2007 progress report describes some progress with regard to the implementation of the CLNM and welcomed the preparation of a recruitment plan for minorities in the state administration.¹⁰⁴ Nevertheless, acc. to the report the problem of under-representation of minorities in state administration, the judiciary and the police persisted, while negative stereotyping in the media decreased.¹⁰⁵ The report described mixed developments with regard to the Serb minority and limited progress concerning various issues related to refugee return.¹⁰⁶ As for the Roma, it was mentioned that the group's position is slowly improving and that the administration is developing a more positive approach, while discrimination and difficult living conditions remain.¹⁰⁷ With regard to chapter 23 of the *acquis communautaire*, the report somehow summarized the paragraph on the political criteria without referring to it.¹⁰⁸

In its February 2008 decision on the principles and priorities of the Accession Partnership with Croatia¹⁰⁹, the council highlighted that a main priority was to meet the Copenhagen criteria and that implementation of the Constitutional Law on National Minorities (CLNM) was a key priority. In this respect, the document also hints to 'best practice' in EU member states. In its key findings in the 2008 progress report on Croatia, the Commission emphasized that more attention needs to be paid to minority protection, especially refugee return.¹¹⁰ In the

¹⁰⁰ SEC(2006) 1385, p. 15.

¹⁰¹ Ibidem.

¹⁰² SEC(2006) 1385, p. 16.

¹⁰³ SEC (2006), p. 54.

¹⁰⁴ SEC(2007) 1431, Commission Staff Working Document, Croatia 2007 Progress Report accompanying the Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2007-2008 {COM(2007) 663 final}, Brussels, 6 November 2007, p. 12.

¹⁰⁵ SEC(2007) 1431, p. 13.

¹⁰⁶ Ibidem.

¹⁰⁷ SEC(2007) 1431, p. 14.

¹⁰⁸ SEC(2007) 1431, p. 53.

¹⁰⁹ Council Decision of 12 February 2008 on the principles, priorities and conditions contained in the Accession Partnership with Croatia and repealing Decision 2006/145/EC.

¹¹⁰ Key findings in progress report 2008, p. 1.

2008 progress report¹¹¹, the Commission described some progress with regard to the implementation of the CLNM and an employment plan adopted by the department for national minorities in the Central State Administration Office.¹¹² In the meantime, implementation problems relating to under-representation of minorities in state administration, the judiciary and the police are described.¹¹³ Further, the report describes ongoing discrimination against the Serb minority and the continued need to encourage a spirit of tolerance and to facilitate refugee return.¹¹⁴ The section about the situation of the Roma minority describes the administration's increasingly positive and pro-active approach towards the Roma while in the same time problems persist in terms of access to employment, housing and social protection.¹¹⁵ The paragraph on chapter 23 of the *acquis communautaire* uses a similar wording when describing progress that has been made with regard to minorities or problems that continue to persist.¹¹⁶

Former Yugoslav Republic of Macedonia (FYROM)

In 2006, the Commission found that in general, inter-ethnic relations continued to improve and that the number of complaints received by the Ombudsman for Minorities decreased substantially.¹¹⁷ In addition, the report saw some progress in participation of non-majority communities¹¹⁸ in public enterprises and administration and increased numbers students from non-majority groups enrolled in universities.¹¹⁹ Nevertheless, it was emphasized that dialogue and trust-building between communities should be further developed to achieve sustainable progress and also the situation of the Roma community continued to cause concern.¹²⁰ The paragraph on chapter 23 of the *acquis communautaire* summarizes the principle findings of the paragraph about the political criteria without reference.¹²¹

¹¹¹ SEC(2008) 2694, Commission Staff Working Document, Croatia 2008 Progress Report accompanying the Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2008-2009 {COM(2008) 674}, Brussels, 5 November 2008.

¹¹² SEC(2008) 2694, p. 13.

¹¹³ *Ibidem*.

¹¹⁴ *Ibidem*.

¹¹⁵ SEC(2008) 2694, p. 14.

¹¹⁶ See SEC(2008) 2694, p. 55.

¹¹⁷ SEC (2006)1387, Commission Staff Working Document, The former Yugoslav Republic of Macedonia 2006 Progress Report, {COM (2006) 649 final}, p. 14.

¹¹⁸ Interestingly, the reports on FYROM do not refer to minorities or minority groups, but to non-majority communities.

¹¹⁹ *Ibidem*.

¹²⁰ SEC (2006)1387, p. 15.

¹²¹ SEC (2006)1387, p. 47.

In 2007, the report confirmed a remaining low level of inter-ethnic tensions, while dialogue and confidence-building among communities was slowly progressing.¹²² In addition, there was some progress regarding equitable presentation, while in general integration of ethnic communities was quite limited.¹²³ With regard to the Roma, the Commission found that the country's Roma strategy yielded no visible results and that discrimination against Roma people continued.¹²⁴ In the report, the paragraph on the political criteria referred to chapter 23 on judiciary and fundamental rights,¹²⁵ which again summarized the above mentioned.¹²⁶

In its 2008 report, the Commission welcomed the law on the use of languages spoken by at least 20% of citizens which was adopted in August.¹²⁷ In addition, the report found that inter-ethnic tensions were generally at a low level but have intensified in some areas and at certain moments.¹²⁸ Furthermore, some progress towards implementing the strategy for equitable representation of ethnic communities in the public sector was confirmed.¹²⁹ While the right to education in one's mother tongue has contributed to the delivery of education services based on ethnicity even in ethnically mixed municipalities, integration of ethnic communities remained rather limited, in particular at the local level.¹³⁰ With regard to chapter 23 of the *acquis communautaire*, the report describes some progress in the field of minority rights and cultural rights, adding that further significant efforts are required.¹³¹ The paragraph criticizes that the integration of ethnic communities, particularly of the Roma, remains limited and the ethnic fragmentation of primary and secondary education is a concern.¹³²

Summary

The above summarized key findings of the progress reports for Estonia and Slovakia as well as Croatia and FYROM show that there are many similarities between the past and current enlargement round, except the mentioning of minority issues in chapter 23 of the *acquis communautaire*. Despite the EU Commission's efforts to foster strict conditionality, continuity and consistency, still the wording of the progress reports allows two read about 'significant

¹²² SEC(2007) 1432, Commission Staff Working Document, The Former Yugoslav Republic of Macedonia 2007, Progress Report, accompanying the Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2007-2008, {COM(2007) 663 final}, Brussels, 6 November 2007, p. 15.

¹²³ Ibidem.

¹²⁴ SEC(2007) 1432, p. 16.

¹²⁵ Ibidem.

¹²⁶ SEC(2007) 1432, p. 53.

¹²⁷ SEC(2008) 2695, Commission Staff Working Document, The Former Yugoslav Republic of Macedonia 2008, Progress Report, accompanying the Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2008-2009, {COM(2008) 674}, p. 19.

¹²⁸ Ibidem.

¹²⁹ SEC(2008) 2695, p. 20.

¹³⁰ Ibidem, the reports describes tendencies of segregated schooling.

¹³¹ SEC(2008) 2695, p. 61.

¹³² Ibidem.

improvements' and 'missing efforts' in a certain field of minority integration in the same report.

Various organisations, NGOs and agencies have observed that members of minority groups are particularly in danger of being discriminated against at local level, be it by disruptions of the return of refugees or discrimination against Roma, not least because the local level is less susceptible to international pressure: Especially at the beginning of the monitoring process, the monitoring of minority rights is focused at national level and on national minorities.¹³³ For example, in the Former Yugoslav Republic of Macedonia, the necessary changes of municipal borders in the ongoing decentralisation process affected the populations of each municipality and directly affected majority/minority ratios, in many cases having adverse effects on interethnic relations.¹³⁴ The example of decentralisation processes, promoted by the European Union (amongst other) in order to achieve economic and social inclusion of all groups, shows that in particular for the Western Balkans countries, policies aiming at improving the life of minorities need to be tailor-made for each case.

IV. Is there a revised strategy?

Generally speaking, minority protection is much more visible on the EU's current enlargement agenda. This is reflected in various documents and might also respond to Brussels' greater interest to promote stability and security in the Western Balkans. Vis-à-vis the countries of the region, the EU Commission is eager to stick to the newly defined principles of conditionality¹³⁵, transparency, consistency and continuity. For example, in contrast to past accession negotiations, minority protection was introduced into chapter 23 of the *acquis communautaire* (Justice and fundamental rights). Nevertheless, screening the EU's annual progress reports and the enlargement strategy for Croatia and FYROM, it seems that there is also repetition of past accession negotiations, e.g. in terms of wording or the focus on single minority groups. Not least, there is still a lack of EU internal commitment to minority protection and the situation of double standards remains, impacting Brussels' consistency and continuity of 'strict conditionality'. In terms of theory, the lack of an EU-inherent system of minority protection also prevents the uploading of lessons learned from previous enlargement

¹³³ International Commission on the Balkans 2005: 33.

¹³⁴ European Agency for Reconstruction, *Minority Issues Mainstreaming – A Practical Guide for European Agency for Reconstruction Programmes*, Thessaloniki/Flensburg European Agency For Reconstruction, 2006, p. 110.

¹³⁵ Some scholars talk about a fine-tuned or second generation conditionality, see e.g. G. Toggenburg, *A remaining share or a new part? The Union's role vis-à-vis minorities after the enlargement decade*, EUI Working Paper LAW No. 2006/15, p. 4.

rounds by EU institutions other than the Commission or new member states. Therefore, the download of a revised strategy remains limited to a certain extent.

Conclusion

The 2004 and 2007 enlargement rounds influenced the EU's current enlargement strategy with regard to minority issues to a certain extent. While the EU Commission in its progress reports takes into account special features of the region and attempts to remain committed to the principle of strict conditionality, it seems that on the other hand the progress reports appear to be quite similar to those issued during past accession preparations.

Furthermore, double standards remain and will continue influencing the continuity and consistency of conditions and evaluation of progress made by candidate countries. In the meantime, despite a certain lack of consistency and clarity, it could be argued that the so-called enlargement fatigue and discussions about Europe's boundaries and integration capacity could lead current candidate countries to even greater efforts to comply with the EU's requirements regarding minorities.

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