

One size fits all?
The EU's Principle of Conditionality towards the Western Balkans

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Abstract

The EU's SAP couples the granting of EU tools such as contractual relations to the fulfilment of conditions within the partner countries. The EU's monitoring and rewarding practice exerted through the principle of conditionality vis-à-vis the Western Balkans has however received far less attention than the EU's impact on domestic grounds. The principle of conditionality is conceptualized along rationalist arguments that conditions are set as rewards whereas their fulfilment leads to the promised reward. It implies the setting of identical conditions while differentiating in monitoring and rewarding as to account for heterogeneous domestic conditions. The setting of conditions is not a static but rather an evolutionary process, as is the EU's monitoring and rewarding practice due to the progress in bilateral relations.

The objective of the paper is to discuss a conceptual framework that is suited to reveal patterns of the EU's application of the conditionality principle across the Western Balkans. If applied in a one size fits all understanding the EU sets identical conditions for all, monitors the evolution of compliant behaviour and then grants the reward once progress is identified.

1 Introduction

Former Yugoslavia or the countries of the Western Balkans have been included in a region-wide EU policy approach ever since Brussels launched the Regional Approach in 1996. It marked the beginning of a coherent set of proven policy tools like contractual relations or financial assistance at a time when the Union's experience in enlargement had never been higher before, as the big bang enlargement loomed already on the agenda. On the flipside, the challenges lying ahead seemed paramount: countries that used to be war enemies, shattered economies, continuing ethnic dividing lines to name only a few. What is more, Albania, Bosnia and Herzegovina, Croatia, FYROM and Serbia and Montenegro seemed to be five (and later six and seven) countries with individual pathways for reform not only because their starting point on the road to reform varied considerably from the beginning.

The EU took account to that challenge: although its toolkit offered the same instruments to all countries it introduced a principle that is to account for the region's heterogeneity, namely the principle of conditionality. Its basic idea is that each of the countries has to reach a certain degree of those parameters that account for democratic democracies under the rule of law, with free and fair elections and vibrant civil societies. Those parameters are set by the EU as conditions in order to provide a roadmap to reform for the partner countries. The individual countries' progress with these conditions is subject of individual judgment based on monitoring on the side of the Union, allowing for an individual rewarding practice. Once sufficient progress is identified, a country would be eligible for the promised reward, at least in theory. Theoretic accounts most prominently base on the reinforcement by reward hypothesis: the higher the EU's credibility and the size and speed of promised rewards and the lower domestic adoption costs, the higher the EU's effectiveness in rule transfer (Schimmelfennig/Sedelmeier 2004). There is however no statement on the application practice of the conditionality principle; it is rather assumed to stay not only constant but also static in character and, most importantly, consistently applied across countries within one policy framework (cf. Schimmelfennig/Scholtz 2008).

The EU's preferred way of influencing is to elicit a favourable response without explicitly holding out the possibility of punishments by offering and granting rewards (Smith 1998). The (empirical) question then is whether the application is consistent or not, meaning that progress is rewarded whereas no observed progress is not rewarded.

This paper challenges the assumption of consistent application of the conditionality principle as a strategy of reinforcement by reward by proposing a conceptual framework that is suited to cover the application of the conditionality principle in the EU's regional policy framework towards the Western Balkans.

The paper starts out by characterizing the envisaged contractual relations taking the form of Stabilization and Association Agreements (2.). The question of what the conditionality principle actually has to fit in terms of the countries performance is illustrated for the frontrunners Croatia and FYROM that belonged to the first to sign an agreement under the regional policy framework (3.). It then presents the conceptual framework suited to analyze the application of the conditionality principle in the EU's Stabilization and Association Process (SAP) across the participating countries (4.). The concluding section discusses the applicability and analytic usefulness of the framework.

2 The Stabilization and Association Agreements

The Stabilization and Association Agreements (SAAs) were introduced in 1999 as core contractual instrument of the new strategy in the Western Balkans. Only FYROM and Albania had already built contractual ties in the form of Cooperation Agreements under the Regional Approach. The new type of agreement within the SAP was now intended to pave the way to eventual accession though containing a much weaker commitment from the Union than the one granted to the countries of Central and Eastern Europe in the Europe-Agreements (Petričušić: 7). Content-wise, the SAAs however strongly resemble the Europe Agreements "although they do differ, not least with regard to regional cooperation" ((Phinnemore/Siani-Davies 2003: 187), see also (Hoffmeister 2006).

The European Commission was further keen to lying emphasis on the idea that FYROM and Albania would be offered upgraded relationships compared to the existing agreements while simultaneously keeping the door open for the others that did not have any kind of contractual relations in 1999 (cf. Commission of the European Communities 26.05.1999: 6). Offering a new kind of contract within the SAP for all countries of the region is of great importance simply because "what makes the headlines is not the progress of trade liberalisation or regional crime-fighting frameworks, but the development of contractual

relations with the EU" (Bechev 2006: 40). Their political significance is nested in the SAAs character as being "a dynamic framework for integration with the EU paving the way for enlargement and the preparation of FYROM and Croatia for accession" (Phinnemore 2003: 103). The term dynamic technically means that the content of an SAA may be adjusted to the partner countries individual situation (tailor made) but also determining the speed at which the signatory could possibly move towards the next step of integration (Priebe 2002: 193). Crucially for this papers objective the conditionality principle fully applies to the SAAs, what is more "the explicit conditionality [in the SAAs – P.L.] is a novelty in association agreements and as such represents a new departure in EU practice" (Phinnemore 2003: 88).

3 Fitting what? Heterogeneous domestic conditions in the partner countries

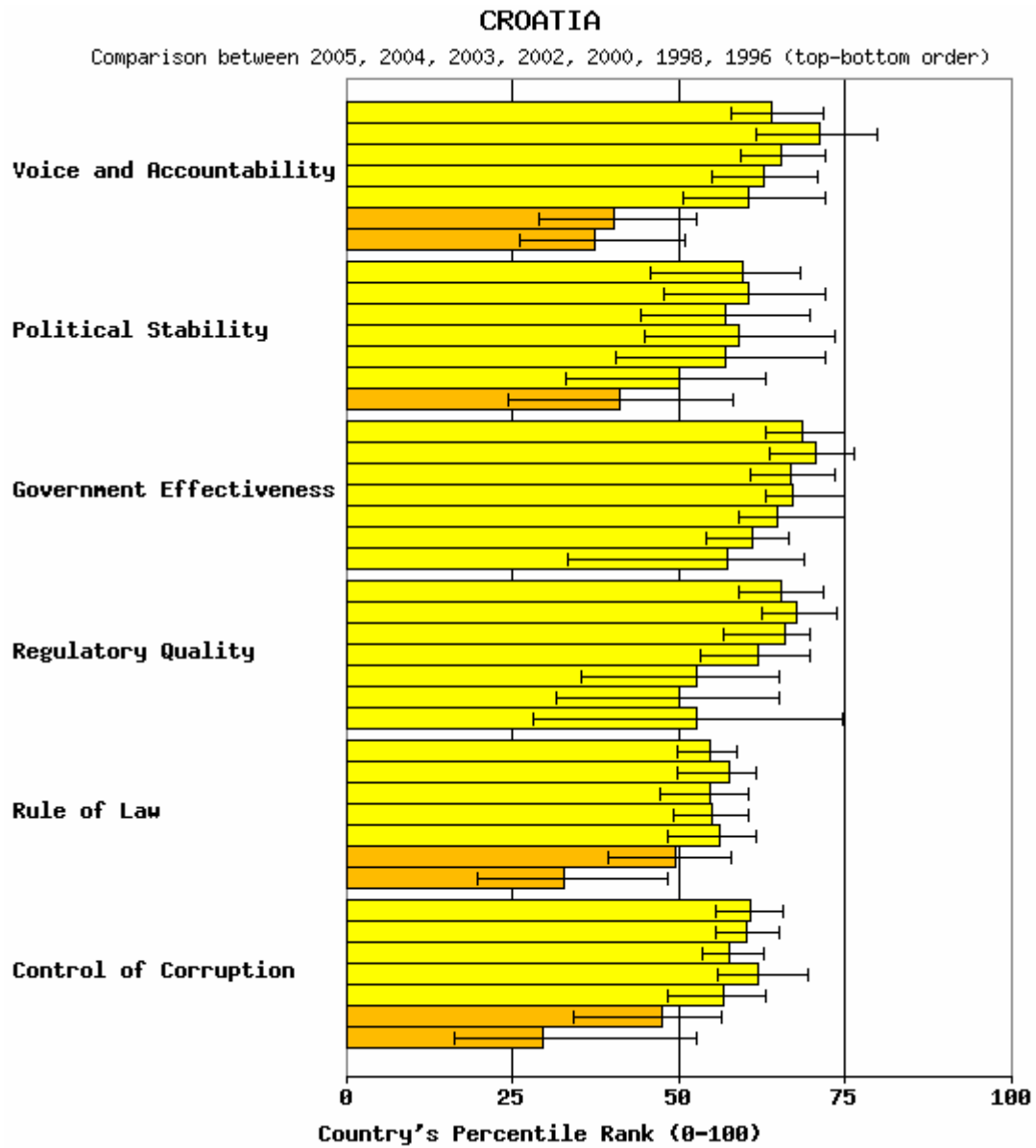
Contrary to the identical EU toolkit and the contractual relations offered to the Western Balkans, the domestic conditions of the countries of the region could not be more disparate: Former Yugoslavia (except Slovenia) and Albania are surrounded by EU member states, making up for a white spot on the political map. Compared to the now-members in Middle and Eastern Europe the countries of the region are marked by varying degrees of lagging transformation, structural deficits in modernization, a massive production slump as well as generally weak state capacity, political instability and high voter volatility (International Commission on the Balkans 2005). Above all, most of the countries still cope with ethnic fragmentation. In 2006, the standard of living was only around a fifth of Western Europe, there is no pluralist civil society, varying degrees of corruption, rabid chauvinism, no share in European identity, no positive nationalism to bolster solidarity but a lethal authoritarian ultranationalism that stoked war passions and mistrust among ethnic groups and makes elementary nation-building a top priority (cf. Pond 2006). This short list is by no means intended to create a pessimistic scenario where any actor would be most likely to fail but a characterization of the "plethora of political, security and economic issues" (Bechev 2006: 31). It is precisely this characterization that is to be dealt with through the application of the conditionality principle.

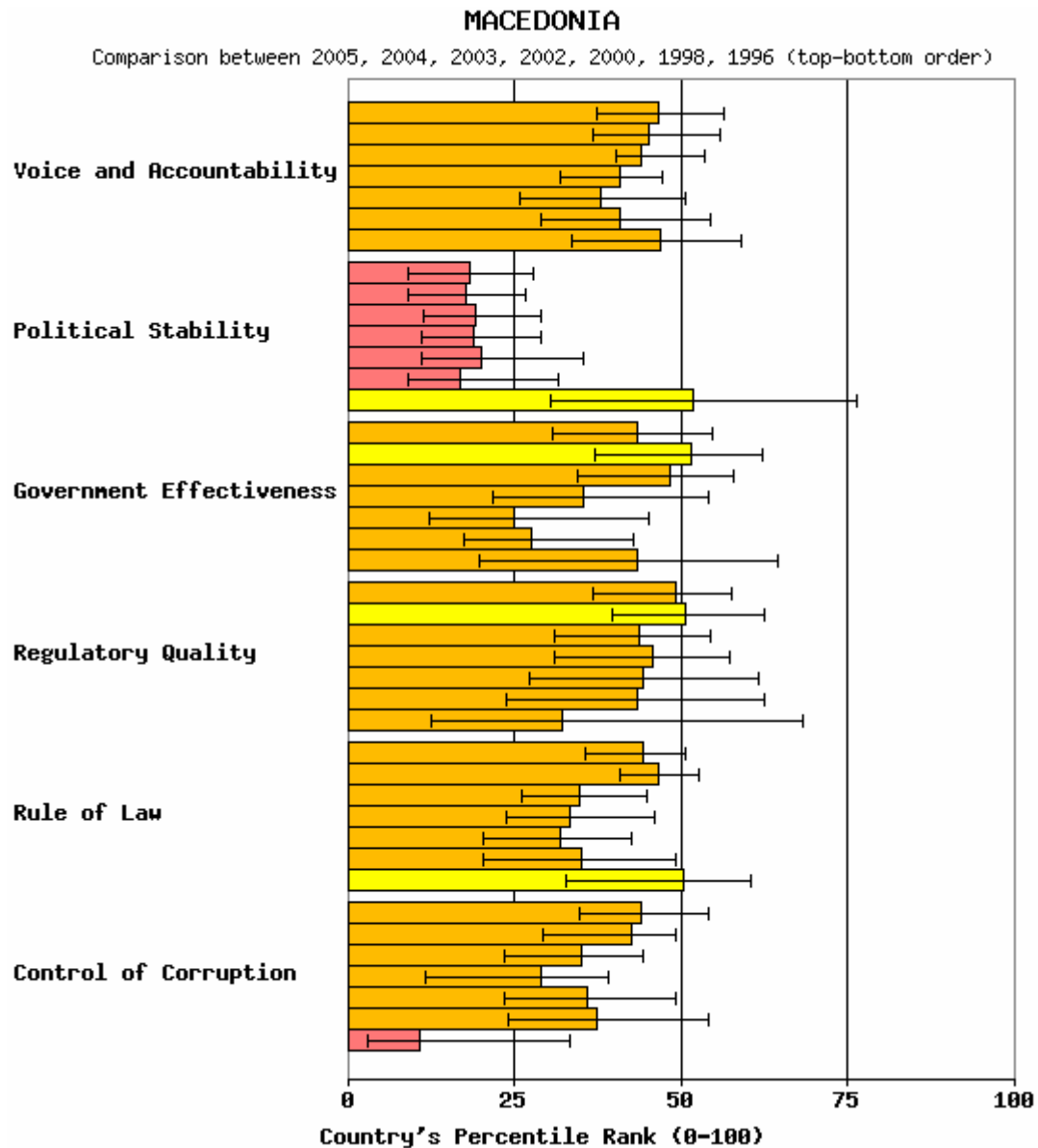
To determine what conditions exactly had to be dealt with in applying the conditionality principle prior to negotiating contractual relations I look at the World Bank Governance Indicators for FYROM and Croatia respectively for the years 1996, 1998, 2000 and 2002. The period thus includes the beginning year of the EU's regional policy approach and ends with the full implementation of the agreement in the two countries.

Contrary to other measurements the Worldwide Governance Indicators project draws on aggregate as well as individual indicators for six dimensions of governance: voice and accountability, political stability and absence of violence, government effectiveness, regulatory quality, rule of law and control of corruption.¹ The following pages offer two tables for Croatia's as well as FROM's performance. Whereas the abstract figures of the countries percentile rank² among all of the 212 countries included in the survey are ignored here, the table illustrates the countries dynamic performance: Croatia since 2000 shows no setbacks but rather stays on similar levels. On the contrary, the table for FYROM shows a massive setback in political stability and a generally lower performance than the Croatia. In short, FYROM serves as an example of severe domestic crisis and modest improvement in some areas while progress is absent as concerns the rule of law.

¹ The aggregate indicators combine the views of a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. The individual data sources underlying the aggregate indicators are drawn from a diverse variety of survey institutes, think tanks, non-governmental organizations, and international organizations. The six aggregate indicators and the underlying data sources can be viewed interactively on the Governance Indicators webpage of this site. To download the full dataset for all countries and indicators in Excel format see www.worldbank.org/wbi/governance.

² This chart shows the percentile rank of the country on each governance indicator. Percentile rank indicates the percentage of countries worldwide that rate below the selected country. Higher values indicate better governance ratings. Percentile ranks have been adjusted to account for changes over time in the set of countries covered by the governance indicators. The statistically likely range of the governance indicator is shown as a thin black line. For instance, a bar of length 75% with the thin black lines extending from 60% to 85% has the following interpretation: an estimated 75% of the countries rate worse and an estimated 25% of the countries rate better than the country of choice. However, at the 90% confidence level, only 60% of the countries rate worse, while only 15% of the countries rate better.





A look on the two countries way towards signing and implementing an SAA however show that both accorded the agreement in the same year thus being the first countries of the region to qualify for improved contractual relations paving the way to membership.

	Croatia	FYROM
Feasibility Study	24 May 2000	16 June 1999
Beginning of Negotiations	24 November 2000	05 March 2000
Signature of SAA	29 October 2001	09 April 2001
Ratification	05 December 2001	12 April 2001
Entering into force	01 February 2005	01 April 2004

If these two countries of the Western Balkans arrive at signing and implementing an SAA around the same time having started as Dayton signatory (Croatia) and non-signatory (FYROM) with the latter suffering serious setbacks in terms of political stability and only little progress if any for the other indicators it remains to be investigated how exactly the principle of conditionality was at work.

4 How to measure size? A Conceptual Framework

The paper's objective is proposing a conceptual framework suited to measure the EU's application of the conditionality principle. As for the Western Balkans, the principle was introduced through a decision of the General Affairs Council in April 1997. It is to serve as "the basis for a coherent and transparent policy towards the development of bilateral relations in the field of trade, of financial assistance and economic cooperation as well as of contractual relations, allowing for the necessary degree of flexibility" (European Union - The Council 15.04.1997). The principle of conditionality is the most prominent feature of the EU's policy approach towards the region, it serves as link between a third country's transformation process and the granting of EU instruments beyond a purely humanitarian or interventionist purpose. In other words, the principle is to ensure that a country that did not move towards democratic and economic reforms would neither benefit from strengthening relations nor be eligible to benefit from preferential market access or assistance (Papadimitriou 2001: 71). If a country fulfils the conditions set by the EU the result is progressive improvement of relations with the EU. From an inductive perspective I propose distinguishing between essentially three steps during application of the conditionality principle: firstly, the setting of conditions, secondly, the monitoring of these conditions and the judgment on progress and lastly, the granting of a promised reward once sufficient progress has been identified on step two. The principle of conditionality is thus nothing less than the "decisive cornerstone of the EU's Western Balkans policy" (Pippan 2004: 220). The soft language of sufficient or certain progress in line with exceptionally broad conditions argues for an inductive, backward-looking analysis. Instead of theory-testing I propose to apply a conceptual framework that reveals patterns in the EU's application practice within the regional policy frameworks. The EU schedule makes clear that "the application of conditionality to contractual relations must be seen as an evolutionary process, the start of the negotiations requiring a lower level of compliance than the conclusion of the

agreements. At each stage, including after the conclusion of the agreements, the situation should be monitored and, in accordance with the relevant articles of the agreement, its application could be suspended in case of serious non-compliance" (European Union - The Council 15.04.1997: 4).

In order to set up a transparent measurement I set up indicators for consistent application on each step, the setting of conditions, the monitoring and the rewarding practice. I argue that the crucial case for applying the conditionality principle is to be found in the evolution of contractual relations. Whereas the financial envelope is lasting only for seven years while immediate humanitarian aid is not conditioned at all, it is only the contractual relations that bind the EU in the long-term with a crucial affect on the countries membership aspirations: only those countries that successfully implemented an SAA made the necessary step towards membership. The consistent application of the conditionality principle in its contractual relations is thus of vital importance to the EU to clearly signal, that it is neither easy nor impossible to fulfil the conditions.

4.1 *Setting conditions*

The picture gets complex when we look at the principles design in the policy framework towards the Western Balkans: it is multi-faceted and in fact consists of multiple sub-conditionalities, organized around the Copenhagen criteria. The comparison to similar policies shows that "the application of the conditionality principle vis-à-vis the Western Balkans reveals some distinctive features, such as the exceptionally broad range of political and economic conditions used by the Council, their separation in general and country-specific measures, and the introduction of a graduated approach to compliance" (Pippan 2004: 226). The many faces of conditions further exceed the distinction between former war adversaries; they are additionally distinguishing for each EU instrument, be it agreements, trade measures or assistance. Taken together, the mere design of the conditionality principle distinguishes between general conditions applying to the entire region and specific conditions, applying to every single country as laid out in the Council's Guidelines for developing contractual relations of April 1997: Firstly, there are general conditions that shall apply to permit the beginning of negotiations (European Union - The Council 15.04.1997:5f.):

1. 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, and absence of harassment initiated or tolerated by public authorities;
2. Readmission of nationals of the States concerned who are present illegally in the territory of a member state of the EU;
3. Compliance of the countries which are signatories of the General Framework Agreement for Peace (GFAP) with the obligations under the peace agreements, including those related to cooperation with the International Tribunal in bringing war criminals to justice;
4. A credible commitment to engage in democratic reforms and to comply with the generally recognized standards of human and minority rights;
5. Holding of free and fair elections at reasonable intervals on the basis of universal and equal suffrage of adult citizens by secret ballot, and full and proper implementation of the results of these elections;
6. Absence of generally discriminatory treatment and harassment of independent media
7. Absence of discriminatory treatment and harassment of independent media;
8. Implementation of first steps of economic reform (privatization programme, abolition of certain price controls);
9. Proven readiness to enter into good neighbourly and cooperative relations with its neighbours.
10. Compatibility of Republika Srpska /Federal Republic of Yugoslavia as well as the Federation/Croatia agreements with the Dayton Peace Agreements.

These general conditions apply equally to all countries, as all are eligible for contractual relations with the EU. As mentioned above, the Dayton signatories or former war parties receive further special or country-specific conditions.

1. Compliance with the obligations under the Basic Agreement on Eastern Slavonia and cooperation with UNTAES and OSCE;
2. Opening of the customs border between Croatia and the Republika Srpska;
3. Evidence of credible pressure on the Bosnian Croats to dissolve Herceg-Bosna structures and to cooperate in the establishment and functioning of the Federation, as well as evidence of the implementation of a truly unified City Council in Mostar and of effective functioning of the United Police Force of Mostar (UPFM). Evidence that the government of Croatia is using its influence in bringing Bosnian Croat war criminals to justice before the International Tribunal.

There are thus two sets of conditions: the smaller one for non-war-adversaries and the more complex one for those that signed the Dayton Agreement.

In an attempt to transfer this vast list of exceptionally broad conditions to elements easier to verifiable through ongoing monitoring, the Council provided elements for the examination of compliance with democratic principles, human rights and the rule of law,

respect for and protection of minorities and market economy reform (European Union - The Council 15.04.1997:5f.):

*Democratic Principles

- Representative government, accountable executive
- Government and public authorities to act in a manner consistent with the constitution and the law
- Separation of powers (government, administration, judiciary)
- Free and fair elections at reasonable intervals by secret ballot

*Human Rights, Rule of Law

- Freedom of expression, including independent media
- Right of assembly and demonstration
- Right to privacy, family, home and correspondence
- Right to property
- Effective means to redress against administrative decisions
- Access to courts and right to fair trial
- Equality before the law and equal protection by the law
- Freedom from inhuman or degrading treatment and arbitrary arrest

*Respect for and Protection of Minorities

- Right to establish and maintain their own educational, cultural and religious institutions, organisations and associations
- Adequate opportunities for these minorities to use their own language before courts and public authorities
- Adequate protection of refugees and displaced persons returning to areas where they represent an ethnic minority

*Market Economy Reform

- Macroeconomic institutions and policies necessary to ensure a stable economic environment
- Comprehensive liberalisation of prices, trade and current payments
- Setting up of a transparent and stable legal and regulatory framework
- Demonopolisation and privatisation of state owned or socially owned enterprises
- Establishment of a competitive and prudently managed banking sector

This list with verifiable elements maps the various sub-conditions in terms of issue-areas. It does not tell however on which level the conditions are aiming at. As an example, refugee return might be a procedural challenge where legislation has already been adapted but is not implemented. On the contrary, the separation of powers is a parameter of government and governing institutions and thus located at a systemic level. The gradual character of the application further delineates the problematique of the missing qualification of single conditions. In the procedure for the conclusion of an SAA, the conditionality principle is applied gradually, with the start of negotiations requiring a lower level of compliance compared to the conclusion of the agreements (European Union - The Council 15.04.1997).

As Blockmans notes, “before negotiations of the conclusion of an SAA can start, a certain level of progress must be made” (Blockmans 2007: 254). But how to measure *certain* progress? In order to qualify the application of the conditionality principle as type of intervention on different levels, I apply Stokke’s six levels of conditionality. The benefit of this qualification is that it introduces measurement that allows for comparison.

Stokke distinguishes between the systemic level that involves the system of government and the governing institutions as the highest level of outside intervention possible. Among the conditions aiming at the partner countries systemic level is the pressure for democratic reform, the introduction of a multi-party system, free and fair elections or improved human rights but also an open economy. National policies and priorities make for an almost equally high degree of political intervention. The condition to provide for refugee return where implementation of existing structures is absent could be one example. Specific policies within an area or a sector can also be addressed but on a lower degree of intervention. The borderline to the systemic or national level is however somewhat blurred as specific policies might have a national bearing. A fourth level refers to the programme or project level. Conditions at this level may involve institutional reform, official regulations or financial contribution. “These conditions determine how the recipient uses its own funds for investment, and, particularly, for recurrent costs” (Stokke 1995: 15). Financial and administrative conditions involve the lowest levels of intervention and operate at a basic level as is the case in financing local costs or the procedures of accounting, reporting or evaluation by technical co-operation personnel (Stokke 1995).

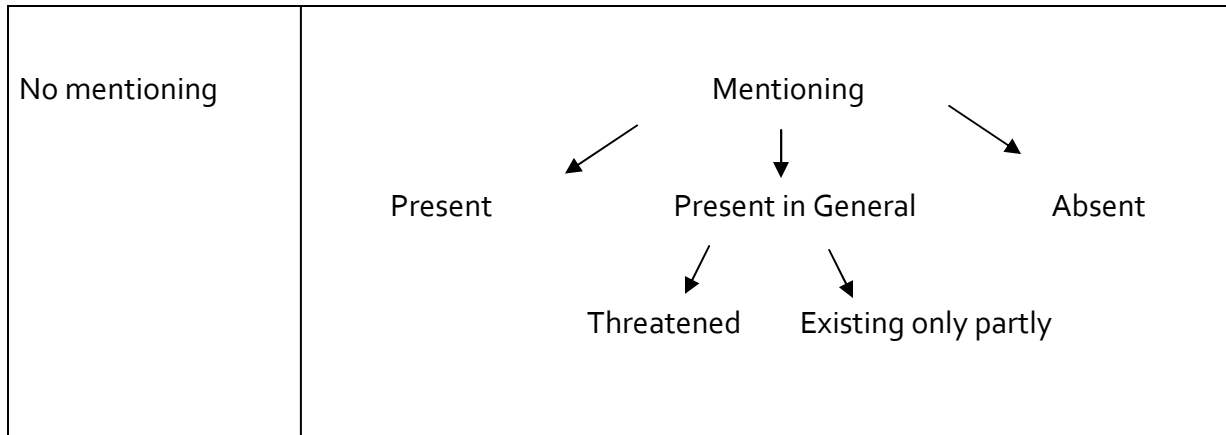
Levels of intervention
Systemic
National policies and priorities
Specific sector policies
Programme or project level
Financial condition
Administrative conditions

Stokke's levels of intervention allow for mapping the EU's judgement of the third countries performance. The greatest benefit of this mapping lies in the fact that the levels do not contain any substantive notion of membership criteria compared to conditions set once a country advances to the status of official candidate. What is more, the levels of intervention allow for temporal comparison whether the EU added or deleted conditions vis-à-vis the countries of the region.

4.2 The EU's monitoring practice

In an analytically distinct step, the EU monitors the countries performance. Technically, the Commission monitors the countries overall performance with particular emphasis on the general and specific conditions laid out in the Council's Guidelines of 29 April 1997. It publishes the results in annual country reports. In the early years of the regional policy framework the Council decided upon operational conclusions that include judgements on the countries performance but also decisions regarding the further road towards (improved) contractual relations. The Commission starts carrying out a feasibility study on the conclusion of an SAA with the approval of the Council once it judges a country as having made "sufficient progress" (Blockmans: 255).

As the reports wording is imprecise in terms of progress I propose to analyze the respective documents for progress on each of the levels of intervention presented above. I qualify the wording as monitoring only if the report mentions a specific condition of the verifiable elements list. If it does, I distinguish between the presence of a given condition, its absence and its general presence. I further divide general presence in cases where the presence is judged as threatened to exist or as only existing partly.



4.3 The EU's rewarding practice

The Council has to reaffirm a countries progress before the Commission submits a formal proposal on the negotiating directives for the SAA concerned. If adopted by the Council, the Commission together with a committee created for the sake of consultation leads negotiations. Due to the SAAs character of a mixed agreement they require Council and European Parliament approval as well as ratification by all EU member states and the non-member state concerned. The third level to be included also offers room for differentiation among the countries, as the precise contents of the agreements are subject of negotiation. The table below shows the different points in time the countries were rewarded with an SAA. It clearly erects a dividing line across the Western Balkans: those being tied to the EU by means of contractual relations and those that have not, as Bosnia-Herzegovina, Serbia and Montenegro by the end of 2006 when the SAP was replaced by a new policy.

	Albania	FYROM	Croatia	BuH	Serbia and Montenegro
2000	0	0	0	0	0
2002	0	1	1	0	0
2004	0	1	1	0	0
2006	1	1	1	0	0/0

5 Conclusion

This paper aimed at proposing a conceptual framework to analyze the art and style of the EU's application of the conditionality principle across the Western Balkans. To date, variation in the EU's impact has been assessed with the help of macro variables such as size and speed of rewards or the party constellations as contributing factor on the partner countries' domestic grounds. The framework presented here takes a perspective rather focused on the micro-perspective of setting conditions, monitoring individual domestic progress and rewarding or granting tools that were earlier conditioned.

The inductive approach striving for conceptualization is disputable in that it lacks theoretical backing. The benefit however is a systematic mapping of the application of the conditionality principle vis-à-vis the Western Balkans whose patterns can only then serve as population of cases to chose from for explanatory research.

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