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Matching Deeds to Words?

***The Principle of Conditionality in the EU's
Contractual Relations with the Western Balkans***

Dissertation
zur Erlangung des akademischen Grades
Dr. rer.pol.

Vorgelegt von
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April 2011

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Disputation: 29.06.2011

Preface

The early research profited from extensive activities conducted at the Stability Pact for Southeastern Europe in Brussels, Working Table III under the chairmanship of Kilian Kleinschmidt. The doctoral scholarship of the German Research Foundation (DFG) and the affiliation to a group of fine experts assembled in my graduate school “Multilevel Constitutionalism” at Berlin’s Humboldt University under the chairmanship of Prof. Ingolf Pernice provided wonderful opportunities to explore the academic universe for which I am deeply thankful. The scholarship also allowed an extensive eight-month research stay at ETH Zurich under the supervision of Prof. Frank Schimmelfennig at the Center for Comparative and International Studies (CIS).

My deep gratitude rests with those that continuously believed in the project and my abilities to finally master it: First of all, my family members that were the most convinced of all, Pazit Schrager, for introducing me to the Western Balkans, Henriette Litta, whose ongoing support was splendid and Dr. James Powell for providing alternative views on life in general and dissertation projects in particular.

Above all, I am indebted to my supervisor Prof. Tanja A. Börzel of Free University Berlin that never stopped providing intellectual and other guidance necessary to complete the project.

Responsibility for shortcomings and errors is, however, my own.

Bonn, April 2011

Pamela LUCKAU

Table of Contents

Preface	i
Table of Contents	ii
List of Abbreviations.....	vi
Tables and Figures	vii
1 Introduction.....	1
1.1 Conditionality in the Literature	3
1.2 Research Question.....	4
1.3 Research Design.....	5
1.4 Outline.....	7
2 Theoretical Framework.....	10
2.1 Conditionality and Consistency – Definitions.....	10
2.2 Conditionality as Mechanism of EU impact	12
2.3 Conditionality applied in State-to-State-Relations: consistent or not?.....	14
2.4 Reinforcement by Reward.....	15
2.4.1 Determinacy of Conditions.....	16
2.4.2 Size and Speed of Rewards	17
2.4.3 Credibility of Threats and Promises.....	19
2.5 Compliance as Mode of Governance	20
2.6 Summary	22
3 Research Design	23
3.1 Analytical Framework.....	23
3.2 Operationalizing Conditionality	25
3.2.1 Indicator I: Determinacy of Conditions.....	26
3.2.2 Indicator II: Monitoring Compliance	26
3.2.3 Indicator III: Recommending the Reward upon Compliance.....	27
3.2.4 Indicator IV: Credibility of Threats and Promises	27
3.2.5 Level of Measurement.....	28

3.3	Data	30
3.3.1	Bilateral Agreements	30
3.3.2	Indicator I, IV	30
3.3.3	Indicator II, III	30
3.4	Measurement Problems	35
4	Bilateral contractual Relations: the Outcome	37
4.1	Mapping contractual Relations: the legal Background	41
4.2	(No) Strings attached? Credibility, Size and Speed of Rewards	42
4.2.1	Trade and Cooperation Agreements	44
4.2.2	Stabilization and Association Agreements	47
4.2.3	General Membership Promise without Candidate Status	56
4.2.4	Official Candidacy to Membership	59
4.3	Gradual logic of Reward? Discussion of Findings	61
4.4	Selecting Cases for further Analysis	62
5	Indicator I: Determinacy of Conditions	63
5.1	Attaching the Strings: Requirements for bilateral Agreements	64
5.1.1	Post-Dayton	64
5.1.2	Offering Cooperation Agreements: The Regional Approach	71
5.1.3	Enhancing Cooperation to Association: Stabilization and Association Process	79
5.1.4	Offering the golden Carrot: the (potential) Membership Perspective	81
5.2	Discussion: Variation on Indicator I	83
6	Indicator II and III: Monitoring Compliance and recommending Rewards	87
6.1	Albania	90
6.1.1	Regional Approach	90
6.1.2	Stabilization and Association Process	92
6.1.3	Pre-Accession	94
6.1.4	Discussion: Indicator II and III for Albania	94

6.2	FYROM.....	96
6.2.1	Regional Approach.....	96
6.2.2	Stabilisation and Association Process	99
6.2.3	Discussion: Indicator II and III for FYROM.....	100
6.3	Croatia.....	102
6.3.1	Regional Approach.....	102
6.3.2	Stabilization and Association Process	108
6.3.3	Discussion: Indicators II and III for Croatia.....	110
6.4	FRY/ Serbia-Montenegro/ Serbia & Montenegro	111
6.4.1	Regional Approach.....	111
6.4.2	Stabilisation and Association Process	117
6.4.3	Pre-Accession.....	122
6.5	Serbia.....	123
6.6	Montenegro	126
6.6.1	Discussion: Indicator II and III for FRY/S&M / Serbia/ Montenegro	128
6.7	Bosnia and Herzegovina.....	130
6.7.1	Regional Approach.....	130
6.7.2	Stabilization and Association Process	134
6.7.3	Pre-Accession.....	137
6.7.4	Discussion: Indicator II and III for Bosnia and Herzegovina.....	141
6.8	Mapping Variation for Indicator II and III: across-country Comparison.....	142
7	Indicator IV: Credibility of Threats and Promises	149
7.1	General Conditions and pre-existing Cooperation Agreement.....	150
7.1.1	FYROM.....	150
7.1.2	Albania	152
7.2	General + specific Conditions and no contractual Relations.....	154
7.2.1	Croatia	154
7.2.2	Serbia and Montenegro.....	155
7.2.3	Bosnia and Herzegovina.....	158
7.3	Mapping inconsistent Application of Conditionality	161

8 Conclusion	163
8.1 Summary of Findings	163
8.2 Discussion of Results	170
 Bibliography	 174
 Annex.....	 182
Kurzfassung der Ergebnisse	182
Deutsch.....	182
English.....	188
Vorveröffentlichungen	193
Curriculum Vitae.....	194

List of Abbreviations

BiH	Bosnia and Herzegovina
CARDS	Community Assistance for Reconstruction, Development and Stabilisation
CEECs	Central and Eastern European Countries
CFSP	Common Foreign and Security Policy
Commission	European Commission
Council	Council of Ministers
DG	Directorate General within the European Commission
EC	European Communities
EP	European Partnership
EU	European Union
FBiH	Federation of Bosnia-Herzegovina
FRY	Former Republic of Yugoslavia
FYROM	Former Yugoslav Republic of Macedonia
GAC	General Affairs Council
GAERC	General Affairs and External Relations Council
GFAP	General Framework Agreement for Peace
ICG	International Crisis Group
ICTY	International Criminal Tribunal for the former Yugoslavia, The Hague
OHR	Office of the High Representative, Sarajewo
OJ	Official Journal of the European Communities
OSCE	Organisation for Security and Cooperation in Europe
RS	Republika Srpska, Entity in Bosnia-Herzegovina
SAA	Stabilisation and Association Agreement
SAP	Stabilisation and Association Process
UN	United Nations
UNTAES	United Nations Transitional Administration for Eastern Slavonia
UPFM	United Police Force of Mostar
WMDs	Weapons of mass destruction

Tables and Figures

3.1	Analytical Framework	24
3.2	Measuring consistent application of conditionality	29-30
3.3	Document analysis of the Commission's reports	32
3.4	Coding for measuring fulfillment of conditions	32-34
4.1	Development of bilateral contractual relations	38
4.2	Credibility and sized/speed of incentives	43
4.3	Cooperation Agreements compared	46
4.4	Stabilization and Association Agreements compared	51
4.5	European Partnership's compared	59
4.6	Accession process compared	60
6.1	Indicator II for Albania	95
6.2	Indicator II for FYROM	101
6.3.	Indicator II for Croatia	110
6.4	Indicator II for Serbia and Montenegro	128
6.5	Indicator II for BiH	141
6.6	Cross-country comparison for Indicator II	146
7.1	Indicators I, II, III and IV for FYROM	150
7.2	Indicators I, II, III and IV for Albania	152
7.3	Indicators I, II, III and IV for Croatia	154
7.4	Indicators I, II, III and IV for Serbia and Montenegro	156
7.5	Indicators I, II, III and IV for BiH	159

1 Introduction

At the end of 1995, the political landscape of Former Yugoslavia had changed dramatically in that it no longer existed. Back in the 1980s, *the Balkans* referred to the mountain range.¹ In the beginning of the 21st century people spoke however as if they “had existed for ever” (Mazower 2000: 1).² It was European Union (EU) parlance that came up with the term “Western Balkans”, carrying the misleading geographical notion. As a region, the Western Balkans stretch from the border of Greece in the south-east to the Slovenian border in the north-west and consists of Albania, Bosnia and Herzegovina (BiH), Croatia, the former Yugoslav Republic of Macedonia (FYROM), Serbia and Montenegro. All six embarked on their way of integration into the EU – though the distance to the ultimate prospect of accession varies considerably.

News reports from the region raise doubts about the prospect of enlargement within the coming years: Following the elections in Albania in June 2009, the socialist opposition boycotted parliamentary sessions for more than three months and accused the head of the newly elected government of massive electoral fraud. The opposition leader and mayor of Albania’s capital Tirana, Edi Rama, even voiced doubts on the very existence of a functioning democracy in Albania (Schwarz 2009b).

The domestic state of play in BiH is marked by ongoing deadlocks in the legislative process as both entities have a veto right based on the Dayton provisions. The office of the high representative, installed based on the Dayton provisions, still exists and there is doubt that the country even manages to fulfill the most basic requirement any time soon: to reform the country’s constitution. For now, the term “stable instability” best describes the situation in BiH (Martens 2009).

A third example from Croatia sheds light on what problems might arise once a country is negotiating its membership: Croatia’s negotiations stalled for more than nine months after Slovenia vetoed its continuation in the Council. The reason is an ongoing dispute on the border between the two South East European neighbors. When this smoldering border conflict

¹ The term “South Eastern Europe” follows a strict geographical notion and also comprises Bulgaria and Romania, “and at times also Greece and Turkey” (see Cameron und Kintis 2001).

² For a detailed historic account of the region today called The Balkans see Mazower (2000).

was related to the external border to Croatia as a non-EU neighbor, Slovenia entered the EU nevertheless. Now that this conflict is an internal border between a member and an official candidate country, Slovenia's Council veto interferes in Croatia's negotiation schedule. Taking these examples together, observers are tempted to think of a Balkan paradox: the Western Balkan country's interest in EU membership seems to be highest when domestic problems render fulfillment of EU requirements most unlikely (Schwarz 2009a). This Balkan paradox provokes a bunch of questions: do conditions necessary to fulfill for the advancement of contractual relations all matter to the same degree and for all countries? May some conditions be subject to stricter monitoring than others? Conceptually, these suspicions mounted under the umbrella of conditionality. In broad terms, conditionality is understood as

“...the use of incentives to alter a state's behavior or policies as a basic strategy through which international institutions promote compliance by national governments (Checkel 2000: 1).

Analytically, conditionality is understood as a continuum where incentives are set and conditions are formulated in order to evoke a defined behaviour on behalf of the partner country. Applied consistently, the incentive or reward is granted only upon fulfilment of conditions. In 2002, American observers wondered whether the EU would manage to “hack the Balkans” any time soon (Abramowitz and Hurlburt 2002). The authors made clear that the Union simply must succeed in its enduring effort to solve the problems of a region where the risk of new conflict might have lowered but the toughest economic challenges would still be ahead. In applying its golden carrot, „the centerpiece of the EU's Balkan strategy is to move the region's states toward membership in the union, however distant that prospect remains” (Abramowitz and Hurlburt 2002: 3). This project's interest lies in the EU's efforts of integrating the Western Balkans. The research question asks for the consistent application of conditionality vis-à-vis the Western Balkans. The analysis starts with the observation that bilateral contractual relations did indeed develop since 1996, though not at the same speed. The conclusion of bilateral contractual relations rather progressed at most different speeds and with agreements containing substantive differences. So despite today's country-specific distance to the golden carrot of eventual accession, the mere mentioning of the prospect of enlargement in 2000 created a *fait accompli* whose ignorance would be costly and thus almost impossible (Biermann 2001: 922). In other words:

“No matter how vague and conditional the EU decision to extend the membership perspective, the genie is now out of the bottle” (ECSA Review Forum 2001: 6).

To be clear, the approach chosen here takes the existing policy setup or the production of conditions as a given and does not seek to explain its coming into being in the first place. Instead, it sharpens the perspective on the interaction between the EU as the supplier of conditionality and the respective third states response to it. It is neither interested in impact that unfolds on the country's domestic grounds. The literature review covers these aspects and identifies the research gap with regard to systematic measurement of the concept on conditionality. It will be subsequently shown that most literatures seem to assume that the practice of applying conditionality is marked by constancy or is at best of rather static nature. Others, however, doubt a strict correlation between progress in the countries and the advancement of bilateral contractual relations. In systematically describing the very application of conditionality, this dissertation adopts an in-between research focus departing from both the top-down as well as the bottom-up angle to arrive empirically at measuring conditionality.

1.1 Conditionality in the Literature

As a topic, "it [conditionality – P.L.] remains insufficiently studied and has generated little policy-making and academic debate" (Anastasakis and Bechev 2003: 2). It is the dissertation's foremost objective to contribute to this debate by presenting empirical evidence on the application of conditionality. Defined in the context of enlargement, conditionality can be best be understood

“...as an exchange between the EU and a candidate country in which the EU offers the candidate a (realistic) prospect of EU membership, if the candidate implements a wide range of (EU driven) domestic reform” (Steunenberg and Dimitrova 22.06.2007: 3).

Literature studying the effects of conditionality offers two competing arguments on its application: Assuming a logic of consequence, a direct impact using incentives and the compliance mode of governance, Vachudová holds that a country's position in the queue to membership reflects its success in meeting the EU's requirements. In that sense, meritocracy as a feature central to the application of conditionality prevails both over time as well as across countries (Vachudová 2001). Youngs argues differently in finding that domestic progress and the granting of rewards promised to be not correlated to any notable degree (Youngs 2001). Against this background, the research design adopts the broad theoretical proposition aimed at descriptively measuring the application of conditionality. Even though

existing research strives for an explanation of rule transfer it nevertheless helps measuring the application of conditionality: The most prominent model explaining rule transfer is reinforcement by reward: Sedelmeier and Schimmelfennig proposed the external incentives model assuming a rational logic of consequence. They hold that the likelihood of rule transfer depends on four conditions, namely that conditions are determinate, that rewards increase in size and speed, the credibility of threats and promises and the number of veto players and adoption costs (Schimmelfennig and Sedelmeier 2004). As regards the partner country's response to externally set incentives, the model assumes a compliance mode of governance. As determining the adoption costs on domestic grounds is beyond the scope of this paper, it is not actual compliance that matters but whether or not the rewarding actor perceives of compliance or not. The theoretical relevance is thus in empirically measuring what is frequently treated as either a container concept or a constant: conditionality.

1.2 Research Question

South Eastern Europe as a region entails all possible states of play of relations the EU has on offer: some are member states (Slovenia, 2004, Romania and Bulgaria, 2008), some are negotiating membership (Croatia, since 2005), some are official candidates awaiting the opening of negotiations (FYROM), some only submitted applications (Albania, 2009, Montenegro, 2008) while others only signed intensified Cooperation Agreements that are not yet in force (Serbia, BiH). If the rewarding scheme of the EU would indeed be meritocratic than one would observe the consecutive conclusion of one agreement after the other based on the assumption that the country's compliance leads to the improvement that is assessed as sufficient moving the country a step further in the levels of approximation. This observation, however, contrasts with the fact that the EU operated regional policy frameworks as of 1996: the Regional Approach from 1996 and the Stabilization and Association process (SAP) as of 1999. Both contained the offer of specific bilateral agreements to be concluded with the individual countries.

So how come this process is marked by incontemporaneity? The general assumption is that compliance with EU requirements leads to progress in contractual relations that might ultimately allow for the country's accession as a full member. Assuming a rationalist logic of action, the reasons could lie either within the EU or within the countries. Conditions for

rewards could either not have been attractive or determinate enough or the credibility of promises made could have been low. On the receiving end, non-compliance with those conditions set might have caused the delay compared to neighboring countries. The research interest lies in an inductive determination of how conditionality was applied assuming the external incentive's model and the compliance mode of governance.

Given that compliance hinges in turn on domestic conditions of the partner, the different speeds in concluding agreements are not surprising. Incontemporaneity alone, however, neither supports consistent nor inconsistent application – it is only by systematically measuring conditionality that one can answer this question. The analysis thus does not arrive at providing a sound explanation as to what accounts for the application of conditionality. The value of the dissertation is measuring the concept of conditionality in a comparative fashion.

1.3 Research Design

The research design is outcome-or *y-centered* in that it measures the application of conditionality in its policy framework towards the Western Balkans. The research design follows the logic of empirical research in analyzing the application of conditionality in bilateral agreements within the EU's policy approaches across a time-span of eleven years for six countries. The analysis, consequently, proceeds in a comparative fashion. The value-added of this project is an over-time as well as a spatial comparison of the application of conditionality vis-à-vis a group of states.

Determining the application of conditionality is a matter of distance to the research object in question. The scope of its application stretches from external action in general, over-time policy approaches to single decisions such as providing a financial envelope for an individual project at one specific point in time. What is more, the concept itself might be challenged for normative reasons. Deductive takes strike to determine the conditions within which the concept yields expected results, such as the adaptation of a specific policy solution to a domestic status quo. This study has a rather narrow inductive take on conditionality: the theoretical section discussed merits and pitfalls of existing research and discussed the distinct levels from which conditionality has been studied.

Empirically, the study grasps the EU's policy frameworks towards the Western Balkans or Former Yugoslavia and Albania and the agreements offered within these. In doing so, the research question seeks to correlate the variation in concluding bilateral contractual relations and will thus focus on the in-between relationship between the EU as an institution and the states as the ones being influenced. The theoretical propositions discussed above inspired the selection of four indicators measuring the application of conditionality: Indicator I determines the determinacy of conditions. Indicator II focuses on the Commission's measurement of progress in meeting the Council's requirements. Indicator III correlates the Commission's assessment with its recommendation to either advance relations or not and indicator IV, finally, assesses the credibility of threats and promises in the Council's rewarding scheme. To repeat, the focus of the empirical analysis is neither on the impact of conditionality as an external influence, nor is it on how the transformation process within the countries themselves backfires on the policy production. It rather takes the existing policy design as a given and zooms into the application, namely how exactly the EU exerts its capacities to monitor the country's performance in light of conditions set for the intensification of contractual relations.

The centerpiece of the empirical analysis is bilateral contractual relations between the EU and the countries of the Western Balkans. Its scope could generally be assessed in a large-n or small-n style. I decided for a small-n cross-country comparative design as the objective of this project is to generate data on the application of the conditionality principle. The temporal scope of the project stretches from 1996 to 2010. 1996 might be seen as the founding year of any policy approach towards former Yugoslavia and Albania a year after the peace conferences and the Dayton agreement. In 2010, all but two countries applied for membership to the EU and thus took the final stepping-stone towards becoming full members of the EU. None of them, however, has been signalled a date or even a year of when the doors to membership will finally open.

At the expense of generality, inferences to be drawn from measuring the very application of conditionality promise to be limited to this dissertation's empirical scope. The objective of knowledge thus focuses on the nature of conditionality rather than testing cause-effect-relationships.

1.4 Outline

The study seeks to contribute an answer to the question of whether or not conditionality is consistently applied in the process of developing bilateral contractual relations with the countries of the Western Balkans. This logic also motivates the organization of the study: following the introductory remarks, chapter two develops the theoretical argument of the dissertation. Honoring the inductive take on the topic, I discuss how conditionality has been conceptualized so far in measuring impact. Interestingly, there are two competing arguments on whether or not conditionality is consistently applied. Gaining inductive findings on the very application of conditionality thus promises further insight in an over-time and cross-country comparison. The defining propositions of conditionality are spelled out building on studies examining the on-the-ground-impact of conditionality. Assuming a rational logic of action, conditionality follows the compliance mode of governance. In order to measure the application of conditionality and not its impact, the external incentives' model inspired the empirical analysis laid out in the analytical framework in chapter three. The analytical framework spells out design and methods of this project and discussed problems arising measuring conditionality.

Chapter four maps the entirety of bilateral contractual relations between 1996 and 2010. In order to conduct the envisaged comparison, Stabilization and Association agreements are in the center of attention as it is the only type of agreement being subject of explicit conditionality and concluded with all countries in question. The empirical picture mapping the outcome is clearly one of differentiation: the countries did not move towards the EU in a group as the name of the first policy framework (Regional Approach) for the region back in 1996 suggested. The fact that every country within the policy framework today maintains contractual relations should not lead to ignore that the region is split into groups: those part of the enlargement process (Croatia, FYROM, Montenegro), the one at the door (Albania) and the remaining two (BiH, Serbia) whose SAAs have not yet entered into force. The in contemporaneity observed in bilateral contractual relations does not argue for either consistent or inconsistent application of conditionality.

Chapter five measures variation on Indicator I or the determinacy of conditions set by the Council. In order to measure consistent application of conditionality, I expect the Council to condition the conclusion of bilateral agreements and to set determinate requirements. These need to be unambiguous and identical to all countries offered identical agreements as rewards.

It will be shown by temporal and spatial comparison that the countries did not face identical requirements. While treaty provisions remain the same throughout the observation period, the countries find themselves in a regatta race with the EU watching closely the individual speed in meeting requirements: Rather than being driven from Brussels, the speed of rapprochement in terms of bilateral contractual relations is rather determined on domestic grounds. The point to be made is that contrary to the general expectation of consistent application, conditions are not designed equally for all countries that maintain relations with the EU as non-members. On the contrary, the principle reveals distinctive features that may not be found in other regions: the first and most obvious one is that the EU operates with two sets of conditions in its regional approach: general and specific conditions. Secondly, the approach is a graduated one, where the beginning of negotiations for an agreement demand less compliance with conditions set than the actual conclusion. Thirdly, compared to the countries of Central and Eastern Europe, the set of conditions for the Western Balkans is found to be generally exceptionally broad with regard to political and economic conditions.

Chapter six puts indicators II and III to an empirical test in analyzing the Commission's progress reports: building on the conceptual framework established earlier, the above section analyzed the progress reports measuring fulfillment, non-fulfillment or partial fulfillment of the Council's list of verifiable elements of conditions (indicator I) elaborated in the previous step. The country-per-country analysis is now compared across-countries, namely in clarifying whether or not the Commission applied the same standards to its various requirements. The levels on which to test for consistent application are threefold: Contrary to the expectation of consistent application, I will show that the monitoring practice varies over time and within countries. In short: while some requirements are always part of the parcel, such as separation of powers, others are never explicitly mentioned, like the right to privacy, family, home and correspondence.

The correlation between indicators II and IV in chapter seven strengthens the empirical results arguing for inconsistent application of conditionality. Inconsistency builds on the fact that not all countries receive identical conditions, not all items on the Council's list of requirements were actually monitored, monitoring further varied over time and across countries and finally, shifting the focus towards the conclusion of a SAA, I found that cases of explicit non-fulfillment of requirements are rewarded: BiH's performance in meeting the condition's changes for the worse throughout the Commission's recommendation, the beginning of negotiations and the SAA conclusions. For Serbia and Montenegro, there is an improvement

but against a very low performance that does not even include fulfillment of the set of special conditions. The Croatian case is shown to be inconsistent on two levels: firstly, by rewarding the country with an SAA the Council waters down the sequential logic regardless of the Commission's finding that ICTY cooperation is uneven. Secondly, the country's performance in meeting the requirements is generally low. Albania and FYROM present two cases that fit best with the idea of consistent application: they show the best performance across the region while Albania's figure illustrates the sequential logic of constant improvement prior the actual conclusion of an agreement.

Finally, the concluding chapter eight summarizes the results and engages in a discussion on implications for both theory and practice.

2 Theoretical Framework

The introductory section presented the study's objective that lies in measuring the application of conditionality across a group of countries as well as over time. Having sketched out the broader context of the project, the theoretical section frames the research question in presenting existing research and hypotheses on the application of conditionality. The remarkable increase in using conditionality in the late 1990s and early 2000 has led to a considerable boost in studies examining the impact of conditionality: it conceptually stretches from countries within and beyond the European borders, institutional settings or policy areas (Schimmelfennig and Sedelmeier, Schimmelfennig et al. 2003, Grabbe 2006, Kelley 2004, Börzel et al. 2008, Sasse 2008). There is, however, only little evidence on whether or not conditionality is applied consistently.

This chapter starts with an overview on the literature defining conditionality as EU mode of influence as it was “arguably the most prominent feature of enlargement governance” characterizing the EU's impact on domestic grounds (Dimitrova 2002: 175, see also Börzel and Risse 2009). Among these modes, the external incentive's model is explaining a pattern of rule transfer postulating a reinforcement by reward bargaining strategy. This strategy assumes a rationalist application of conditionality. Despite this model's acknowledged explanatory power, there are opposing arguments on whether or not conditionality is applied consistently. What is thus needed to answer the research question is an inference from existing research on the very application of conditionality. Honoring the inductive take on the topic, the theoretical argument is straightforward in defining conditionality as part of the EU's enlargement toolbox assuming a mode of reinforcement by reward.

2.1 Conditionality and Consistency – Definitions

Conditionality has been labeled as

“...EU's most powerful instrument for dealing with the candidate and potential candidate countries in post-communist Europe” (Anastasakis and Bechev 2003: 1).

The most prominent monograph studying the application of conditionality vis-à-vis the Western Balkans talks of it as “special brand” of its kind (Blockmans 2007: 6). In common speech a condition is something essential to the appearance of something else. In IR theory, conditionality is understood as „the use of incentives to alter a state’s behavior or policies as a basic strategy through which international institutions promote compliance by national governments (Checkel 2000: 1). In the context of today’s enlargement conditionality is associated with state-to-state-like relations: the donor or supply side sets conditions whose fulfillment by the partner country is a pre-requisite for entering in an agreement (cf. Stokke: 11). The state’s behavior to be altered assuming the application of conditionality is thus one of compliance or fulfillment of the condition. Smith’s definition provides a more nuanced view on the type of incentive and the content of conditions. For her, conditionality is

“the linking, by a state or international organization, of perceived benefits to another state (such as aid), to the fulfillment of conditions relating to the protection of human rights and the advancement of democratic principles” (Smith 1998: 256).

Smith’s understanding sheds light on the particularly broad nature of conditions set once they refer to human rights protection or the rule of law. The definition also underlines the absence of crisp conditions that can either be found to be fulfilled or not. The *advancement* of principles, however, clearly carries an evolutionary notion. Narrowing the context to enlargement, conditionality can be understood

“...as an exchange between the EU and a candidate country in which the EU offers the candidate a (realistic) prospect of EU membership, if the candidate implements a wide range of (EU driven) domestic reform” (Steunenberg and Dimitrova 22.06.2007: 3).

Steunenberg and Dimitrova assume an exchange and thus a process underlying conditionality. Their definition specifies the variation at both ends of conditionality: first, the incentive set may be more or less realistic to the third country and second, implementation of conditions may be more or less driven by the actor in question. The type of incentives is often related to the context used to describe conditionality: Prominent examples are political conditionality (Pridham 2002), democratic conditionality (Schimmelfennig et al. 2003), membership or *Acquis* conditionality (Smith 2003, Schimmelfennig and Sedelmeier 2004) or aid conditionality (Stokke 1995).

The literature holds that the application of conditionality links both phenomena – the setting of conditions accompanied by incentives and the granting of these once the third state fulfilled

the conditions. The type of linkage assumed is consistency. The adjectival complement to conditionality, *consistent* conditionality, is the absence of irregularity: it is – by definition – free from variation. Consistency is thus defined as „matching deeds to words” (Blinder 1999, quoted in Bronk 2002: 9) This definition draws on keeping promises or granting incentives once conditions are fulfilled. In a broad sense, it requires that

“...decisions taken within the different frameworks, as well as the actions of the EU and the Member States, do not contradict each other” (Smith 1998: 254).

The application of conditionality indeed involves action from both the EU and the member states. The absence of contradiction in applying conditionality is of particular importance once the context of conditionality changed: a country that was a non-member receiving aid may later be prospected the possibility of accession negotiations involving a greater share of involvement of genuine supranational institutions, namely the Commission.

Instead of determining the impact of conditionality such as the likelihood of rule transfer pursuant to conditions fulfilled, the conditionality literature has been consulted with a narrow focus on the very application of conditionality. Impact analysis is thus less relevant regarding this project’s research question. Regarding the application, it is striking that two competing arguments exist on the very application: There is unanimity that conditionality exists, and that it is a mechanism traceable in the EU’s third state relations. The literature, however, offered divergent provisions on whether or not conditionality is applied consistently.

2.2 Conditionality as Mechanism of EU impact

Conditionality has been conceptualized as one among many mechanisms of Europeanization, studying domestic effects of European integration beyond Europe. Research gained momentum not only for membership seeking or aspiring countries, but also beyond the borders of Europe following the enlargement round in 2004 (for an overview, see Schimmelfennig 2007). It assessed the question under which conditions the EU would most likely have “an unprecedented influence on the restructuring of domestic institutions and the entire range of public policies in these countries” (Schimmelfennig and Sedelmeier 2004: 661). For the sake of determining the very application of conditionality as a mechanism, suffice it to state its main features: Conditionality follows the institutional logic of

consequence representing core rationalist assumptions of an actor affecting the cost-benefit calculations of the target state (March and Olsen 1998: 160-162). A third state's fulfillment of conditions would thus be a result of cost-benefit-calculations that render a change to the status quo less costly than maintaining it. The logic of appropriateness as opposite logic of action postulates that a target state's behavior is a result of the appropriateness of the rule in question that follows the identification with either the solution to a specific problem or the actor proposing it (cf. Schimmelfennig 2007). Conditionality, however, is

“...based on the direct, sanctioning impact of the EU on the target government and subsumes the intergovernmental channel of external incentives, the compulsory impact, and the compliance mode of governance” (Schimmelfennig 2007: 7).

In the same vein, Diez et. al. conceptualize conditionality as „compulsory impact” that works with „carrots and sticks” with membership being the main carrot at the EU's disposal (Diez et al. 2006: 572). The EU's impact is therefore, generated by definite EU measures on concrete policies rather than carrying wider social implications (Diez et al. 2006: 571) The assumption of compliance is also reiterated, notably in the context of enlargement:

“In membership negotiations, as well as by setting conditions for the opening of membership negotiations, the EU insists on the implementation of its legal and normative framework, the *acquis communautaire* ...” (Diez et al. 2006: 572).

Next to conditionality, socialization is another prominent mechanism in seeking explanations for EU impact on domestic structures. Socialization thus describes the replacement of „conscious instrumental calculations by conscious role-playing” (Checkel 2005: 804) While conditionality assumes an actor such as the EU linking admission or membership directly to behavior, socialization assumes actors relying solely on the use of norms to either persuade, shame or praise actors into changing their policies (Kelley 2004: 428). In conceptualizing how international institutions influenced domestic policies, Kelley argued that traditional rational choice mechanisms such as membership conditionality motivated most behavior changes but that more socialization-based efforts assuming a logic of appropriateness often guided them (Kelley 2004: 426). For determining the application of conditionality, it is of less importance how behavioral changes were motivated as consistency first and foremost assumes the fulfillment of a condition and not the motives behind. The defining features of assuming an incentive-based approach and the compliance mode of governance renders the concept of conditionality the most promising for the purpose of this project as the research interest stops long before EU influence unveils its impact on the ground: The

conceptualization of conditionality builds on the aforementioned propositions in assuming concrete EU measures targeted on concrete policies through intergovernmental channels of external incentives.

2.3 Conditionality applied in State-to-State-Relations: consistent or not?

Research focusing on the impact of conditionality comes up with two competing arguments on whether or not conditionality is applied consistent. In the context of enlargement, conditionality is assumed to be used fairly effective in prompting alignment with the Acquis (cf. Grabbe 2006; Jacoby 2004; Schimmelfennig and Sedelmeier 2005; see also Kelley 2004; Vachudová 2005, Sedelmeier 2008: 806f). Even so, effectiveness in terms of rule transfer does not tell whether the EU did indeed match deeds to its words. Some do assume a consistent application of conditionality:

“So far the EU has adopted a roughly merit-based approach to enlargement: an applicant’s place in the membership queue corresponds more or less to the progress it has made toward fulfilling the requirements.” (Vachudová 2001: 32)

Vachudová assumes a meritocratic nature of the enlargement process that combines the EU’s openness to all European states with the Commission’s merit-based rules for a state’s promotion towards membership (Vachudová 2001: 35). The Commission’s evaluations and the Council’s decisions are consequently, reflecting the state of reform in the country in question. In short, the general logic and fairness of reports/ opinions is generally accepted (Vachudová 2005: 113). The meritocracy claim thus assumes a constant application of conditionality both in the Commission’s and the Council’s action. She further holds that meritocracy prevails across countries and over time. While asymmetric interdependence and enforcement both give credibility to the EU’s threats of exclusion, meritocracy gives credibility to its promise of eventual membership (Vachudová 2005: 112).

Of the three characteristics of the pre-accession process identified – meritocracy as a condition for consistency – is the most relevant one for this paper. Under the assumption that asymmetric interdependence and enforcement of EU requirements both stay constant in that scope and incentives for compliance as well as the rewards are set towards the entire group of countries, the meritocracy assumption is one gearing at the procedural aspect of establishing bilateral relations with each individual country.

Contrary to Vachudová's rationalist propositions Youngs holds that

"Indicative of its positive approach to democracy building was the EU's commitment to apportion aid increases in line with democratic progress. In practice, however, the 'rewards' element of European policy has also exhibited significant limitations. The overall distribution of EU aid has not been strongly correlated to recipient's democratic performance" (Youngs 2001: 357)

If there is no strong correlation between aid distribution and democratic performance, conditionality would undeniably be applied inconsistently. Referring to evidence from Africa to Mediterranean countries to Latin America Youngs holds for the Western Balkans, that democratic requirements were in fact included but served domestic purposes on the partner country's grounds rather than being necessary conditions for granting rewards (Youngs 2001: 358). In the same vein, Charillon doubts the effects of conditionality as it is

"...highly disputable whether conditionality is efficient as a political tool: the most acute problems are hardly dealt with ..." (Charillon 2004: 260).

Most evidence on conditionality focuses on its impact thus assuming a constant application of conditionality. In claiming inconsistency, Youngs' argument also draws on the impact dimension as he argues that domestic purposes were served instead of compliance being a necessary condition for the promised reward. In reducing the research focus to the very application of conditionality the subsequent sections focus on the defining properties of the concept of conditionality.

2.4 Reinforcement by Reward

Underpinning conditionality is an external incentives model of reinforcement by reward, under which the EU "provides external incentives for a target government to comply with its conditions" (Schimmelfennig and Sedelmeier 2004: 662). The dependent variable here is rule transfer explaining the EU's impact in using conditionality. Although the research question is limited to the very application, the external incentive's model postulates properties that determine the cost-benefit-balance which would either result in rule transfer or not. The external incentives model conceptualizing the impact of conditionality thus accounts best for the "unprecedented influence" the EU exerts in third countries (Schimmelfennig and Sedelmeier 2004: 661).

The bargaining strategy underpinning conditionality perceives of the actors as strategic utility maximisers exchanging information through bargaining while compliant behavior of the partner country is rewarded. Conditionality is thus operated assuming compliance. Non-compliance to conditions, however, results in withholding rewards but will not be reinforced by either punishment or further support. In order to measure the application of conditionality, three out of four properties proclaimed in the reinforcement-by reward-hypothesis matter: the determinacy of conditions, the size and speed of rewards and the credibility of threats and promises (Schimmelfennig and Sedelmeier 2004: 664-666):

a) the determinacy of conditions

Determinacy of conditions depends on clear behavioral implications of a rule and the setting of rules as conditions for rewards. The more legalized the status of the rule, the higher the determinacy of conditions. If a condition is determinate it in turn binds the EU to fulfil the reward or put simply, to keep its promise.

b) the size and speed of rewards

Size and speed of rewards depend on what the EU is offering in qualitative terms. The stronger the link to membership the more powerful is the reward. The longer the temporal distance to the payment of rewards the lower the incentive to comply (speed).

c) the credibility of threats and promises

The third condition is the credibility of the EU's threat to withhold rewards in case of non-compliance and, conversely, its promise to deliver the reward in case of fulfillment of conditions.

The fourth proposition, veto players and adoption costs, points to the likelihood of compliance. As actual compliance is beyond the research question's scope, the fourth proposition is left aside.

2.4.1 Determinacy of Conditions

First of all, the reinforcement by reward strategy assumes the setting of rules as conditions for rewards. Sedelmeier and Schimmelfennig hold that the relevance of conditions varied with

regard to the context within which they operated. The term *democratic conditionality*, for instance, comprises most fundamental norms such as human rights or the rule of law.

This type of conditionality is well known from development assistance as early as in the 1940s and 1950s (cf. Stokke 1995). It was not before 1988/1989 when the European Communities engaged in trade and cooperation agreements with the Central and East European countries that conditionality became vital part of today's practice (cf. Smith 1998). Despite other factors, one of the most significant is that "the norm of conditionality" developed only in negotiating the trade and cooperation agreements; the opening of exploratory talks in the mid-80s depended on whether the countries concerned "were willing to approach the Community" (Smith 2004: 53). The conclusion of the agreement was explicitly made conditional upon the partner country's respect for human and minority rights or the respect for democratic principles in general (cf. Dimitrova 2002: 175) – a novelty.

Acquis conditionality comprises the specific rules of the *acquis communautaire*. Once accession negotiations are opened, conditions comprise concrete and detailed preparatory steps to align the legislation of the membership seeking country. Contrary to previous rounds in enlargement, taking on the *Acquis* obligations is a necessary, but not a sufficient condition: prior to the big-bang-enlargement of 2004 the EU has moved to a wider set of reform and transformations objectives encompassed in the well known Copenhagen criteria. Moreover, "...the EU's demands on the CEE applicants were not just a set of conditions to receive defined benefits, but an evolving process" (Grabbe 2006: 32).

There is doubt regarding the determinacy of conditions though:

"Many conditions are ambiguous, inconsistently applied and more demanding of candidates than full members" (see, e.g., Grabbe 2006; Hughes et al. 2005; Schimmelfennig and Sedelmeier 2005, Sedelmeier 2008: 806f)

The content of membership conditions has in large parts overlaps „with reforms that most observers would consider necessary to build a stable liberal democracy and a functioning democracy (Vachudová 2001: 10).

2.4.2 Size and Speed of Rewards

The strategy of reinforcement by reward assumes the setting of external incentives that differ in size and speed. The granting of trading preferences, aid, cooperation and association

agreements and eventual membership may all be subject of conditionality but vary significantly in size and speed (cf. Smith 1998: 253). The prospect of opening accession negotiation is the highest available incentive in the EU's contractual relations vis-à-vis third states. Insights from research on the impact found varying effectiveness in applying conditionality. Schimmelfennig and Scholtz showed that

“the credible perspective of becoming an EU member after thorough democratic reform has been the most effective among the EU's strategies and instruments (others being social influence or persuasion, for instance)” (Schimmelfennig and Scholtz 2008: 190).

The author's panel study of 36 countries, including Mediterranean or newly independent states showed that the effectiveness of conditionality only weakens

“...if the EU offers less than membership or association that might lead to accession in the future” (Schimmelfennig and Scholtz 2008: 190).

Schimmelfennig and Scholtz thus infer a varying degree of effectiveness that depends on whether or not conditionality is applied in the accession context or not. Their index of political conditionality models the credibility and size of the EU's incentives set. They conclude that the significance of the EU's impact increases with the credibility of the EU's incentives. They also find that not all kinds of conditionality work the same way: „Short of a membership perspective, association and partnership conditionality did not perform consistently better than no or weak conditionality – credible association conditionality being a borderline case.” (Schimmelfennig and Scholtz 2008: 207).

In a similar vein, Steunenberg and Dimitrova find that if the set of incentives offered in the first place is below accession then the whole cost-benefit-manipulation is working differently:

“In the context of non enlargement related EU assistance programs, actors may not perceive their losses in any other but monetary terms and may be likely to respond as much to EU demands as to any other donor, while in the context of enlargement, we assume that actors have more to lose than direct monetary benefits” (Steunenberg and Dimitrova 22.06.2007: 17).

This essentially means, that the higher the credibility and the size and speed of rewards, the greater the determinacy towards membership. A change in cost-benefit-calculations would in turn impact on the compliance mode of governance, the necessary condition to bring about the granting of the reward. Simultaneously, the cost-benefit-calculations change for the EU: the greater the determinacy of conditions and the higher the size and speed of rewards, the costlier a departure from the compliance mode of governance. The impact of conditionality on

cost-benefit-calculations of target countries is thus different in the context of pre-accession and accession. If effectiveness varies, what follows for the application of conditionality? Schimmelfennig and Scholtz as well as Steuenberg and Dimitrova assume a constant application of conditionality. Consistent or inconsistent, the application of conditionality would remain constant despite a shifting cost-benefit-calculation rendering compliance more or less likely. If effectiveness of rule transfers varies, it is safe to contend that the application varies, too.

2.4.3 Credibility of Threats and Promises

The crucial test for credibility of threats and promises is the EU's reaction to the status quo in fulfilling the conditions. The underlying approach to the conditionality principle is focused on positive rather than negative measures to provide incentives for a change in the domestic status quo:

“The Community approach is geared to the principle that international cooperation must focus especially on positive measures providing incentives for the promotion of democracy and human rights; the use of sanctions should be considered only if all other means have failed” (Smith 1998: 265).

Positive measures apply to the entire toolkit at the EU's disposal in its relations towards third states: the granting of trade preferences or aid, the conclusion of cooperation and association agreements, diplomatic recognition and eventual full membership (European Union - The Council 15.04.1997: 2, cf. Smith 1998: 253).

Upon a country's failure to meet the requirements, they are denied the reward and consequently left behind in the 'regatta for accession'. There is, anyhow no extra punishment other than withholding the conditional reward (cf. Schimmelfennig and Scholtz 2008: 190). The author's reasoning essentially draws on the evolution of bilateral contractual relations. Within the aid context, one of the key elements to conditionality is the varying degree of pressure used by the donor, in terms of threatening to terminate aid contributions, actually terminating or reducing it if conditions are not met:

“The donor may set the pursuit of such objectives, by the recipient, as a condition for entering into an aid relationship (*ex ante conditionality*); or expectations of the recipient's progress towards meeting these objectives may be expressed beforehand and followed up afterwards (*ex post conditionality*)” (Stokke 1995: 12).

As Smith adds, this is „essentially an exercise of power by the actor that is using conditionality; the *demandeur* is in a position of relative weakness, particularly if the benefit on offer is especially desired” (Smith 1996: 18). If that is the case, the definition of conditionality focuses on the stick – the act of the threat of or actual denial – rather than on the carrot.

In the accession context, EU conditionality is about offering or holding back carrots rather than carrying a big stick. The context within which conditionality is applied again accounts for variation regarding its application:

“... whereas positive political conditionality has become a general feature of EU relations with third countries in the 1990s, it has been used less consistently than in EU relations with potential future member states” (Schimmelfennig 2007: 17).

The application of conditionality regarding the granting or withholding the reward is thus expected to vary, too.

2.5 Compliance as Mode of Governance

Underpinning conditionality is the expectation of actors as strategic utility maximisers that only change a domestic status quo if adoption costs are less costly than maintaining the status quo (Schimmelfennig and Sedelmeier 2004: 664-666). In order to qualify for the reward, countries need to comply with the conditions set. Compliance hinges on various domestic conditions – the third country’s status quo in terms of transformation, political or economic performance – that matter regarding the recipient state’s adoption costs in either complying with the condition set or not. The domestic political setting limits or facilitates changes in the domestic status quo, the influence of conditionality

“...is not and can never be overwhelming: third countries may be unwilling or unable to meet externally-imposed demands [...]” (Smith 2003).

It is argued, that there are essentially two variables that impact on cost-benefit calculations: the third country’s willingness to meet the conditions and the country's capacities that would affect cost-benefit-calculations in a way that render the maintenance of a status quo costlier than adopting the condition. Both are of particular interest regarding the application of conditionality as these pre-requisites may be subject to the very conditions set. The likelihood of the external incentive's model to function depends in turn on the level of statehood and the democratic quality (Börzel et al. 2008, Noutcheva 2006).

As Noutcheva showed, sovereignty defined as capacity for self-governance as well as a recognized capacity to engage with other actors in the international system is the crucial variable to look at in order to explain the compliance patterns of membership aspiring countries such as the Western Balkans (Noutcheva 2006). She argues that in countries that lack stability and capacities, domestic costs for compliance are higher irrespective of the credibility of the incentives set. In turn, requirements are less costlier to domestic elites when the domestic structures allow for implementation of new rules.

The second variable of interest is a country's willingness to meet EU requirements for increased cooperation. She argues that the quality of political competition at this point of regime change determined whether states embarked on what Vachudová operationalizes as a liberal or illiberal pattern of political change after 1989 (cf. (Vachudová 2005). Countries may either lack capacities to implement required changes or might not be willing to overcome instances of mismatch with domestic structures (Börzel and Risse 2009: 10). So even when the desirability of increased and conditioned cooperation is high, the third states behavior that is altered through conditionality may vary from complying with conditions, dismissing their validity to withdrawing from the entire process. Reinforcement by reward thus assumes the compliance mode of governance. For rationalists,

“...state compliance stems from coercion (sometimes), instrumental calculation (always), and incentives – usually material, but possibly social as well. The choice mechanism is cost/benefit calculations [...]” (Checkel 2001: 559).

So how do this theoretical propositions relate to the research question on the application of conditionality? If I were to measure actual compliance, the analysis would need to include the measurement of the domestic adoption costs explaining the compliance pattern. In order to gain inference on the very application of conditionality, what is of interest is the monitoring of compliance by the rewarding actor himself.

If compliance is hindered by the domestic set up affecting cost-benefit-calculations in a way that renders the maintenance of the status quo less costly than fulfilling a condition, the empirical picture of deeds matched to words would indeed vary if the application of conditionality retains its custom of rewarding only compliant behavior. Whether this is the case will be subject to the empirical analysis.

2.6 Summary

The literature studying the effects of conditionality offers two competing arguments on its very application. Assuming a logic of consequence, a direct impact using incentives and the compliance mode of governance, Vachudová holds that a country's position in the queue to membership reflects its success in meeting the EU's requirements. In that sense, meritocracy as a feature central to the application of conditionality prevails both over time as well as across countries. Youngs argues in a different way finding that domestic progress and the granting of a promised reward are not correlated to any notable degree. Against this background, the research design adopts a broad theoretical proposition aimed at descriptively measuring the application of conditionality. The most prominent model explaining rule transfer is reinforcement by reward. Determinacy of conditions, size and speed of rewards, credibility of threats and promises are three out of four properties of the conditionality concept that help measuring the application of conditionality. As regards the partner country's response to externally set incentives, the model assumes a compliance mode of governance. As determining the adoption costs on domestic grounds is beyond the scope of this paper, it is not actual compliance that matters but whether or not the rewarding actor perceives of compliance or not.

3 Research Design

Determining the application of conditionality is a matter of distance to the research object in question. The scope of its application stretches from external action in general, over-time policy approaches to single decisions such as providing a financial envelope for an individual project at one specific point in time. What is more, the concept itself might be challenged for normative reasons. Deductive takes strike to determine the conditions within which the concept yields expected results, such as the adaptation of a specific policy solution to a domestic status quo. This study has a rather narrow inductive take on conditionality: the theoretical section discussed merits and pitfalls of existing research and discussed the distinct levels from which conditionality has been studied. At the expense of generality, inferences to be drawn from measuring the very application of conditionality promise to be limited to the topic of investigation. The objective of knowledge thus focuses on the nature of conditionality rather than testing cause-effect-relationships.

In line with the reinforcement by reward hypothesis, the application of conditionality is operated in an incentive based approach linking the granting of a reward to the fulfillment of requirements. The population of cases is vast. I propose to limit its scope to external relations with third states taking the form of bilateral contractual relations. In order to maximize inferences, I chose cases that bear spatial and temporal variation. The analytical framework clarifies the relevance of the research problem and secures correspondence between theoretical propositions and empirical observations by introducing methods for measuring the application of conditionality.

3.1 Analytical Framework

The concept's defining attributes were discussed in the previous section. Conditionality is operated assuming a high determinacy of conditions, rewards that increase in speed and size, credible threats and promises and a compliance mode of governance. The theoretical sections spelled out the expectations that would result in rule transfer on the partner country's grounds, a field of investigation that lies beyond this project's scope. The defining attributes are, however, operationalized as to measure the application of conditionality.

Honoring the inductive take on conditionality the present section determines the empirical extension. This is crucial in empirical research in that the extension determines what to measure in the first place (cf. Wonka 2007). So while the basic level has been spelled out, the concept of conditionality will be operationalized on an indicator level.

The defining attributes of conditionality are to be measured within the EU's policy framework in the Western Balkans. I propose to empirically test them with regard to bilateral contractual relations as types of formal institutionalization that is offered by the actor in an incentive based approach. Within the various policy approaches contractual relations are accompanied by other instruments: financial and technical assistance and dialogue. Within the policy framework, all three are present but only agreements allow for clear demarcation of presence or non-presence of a defined outcome, notably concluding an agreement that had previously been offered.

The following table presents the study's analytical framework that will subsequently be dealt with in detail:

<p>Observation: Variation in bilateral contractual relations within the regional policy setup towards the Western Balkans</p>
<p>Theoretical Expectation: Fulfillment of conditions (compliance mode of governance) is a necessary condition In order to advance bilateral contractual relations (reinforcement by reward).</p>
<p>Research Question: Is conditionality consistently applied?</p>

Table 3.1: Analytical Framework

Departing from existing research on conditionality, I propose to measure the application of conditionality through indicators. Eventual variation to be found on the empirical indicators will then either support the reinforcement by reward hypothesis or not.

The study's argument departs from the observation, that the countries of the Western Balkans did conclude bilateral agreements though at different points in time. Despite this temporal

variation, chapter four seeks establishing whether or not these agreements were subject to explicit conditionality and whether or not the countries received identical provisions. In analyzing the agreements, the level of comparison sticks to those provisions that are expected to be similar: Preamble as well as general provisions. Second, they define content and scope of conditionality to be applied during this process. Country-specific provisions on trade or participation in Community programs are ignored in order to allow for a comparison between all countries encompassed in the regional policy approach. Moreover, bilateral agreements follow the logic of an incentive-based approach in that agreements are expected to increase in credibility, size and speed towards the ultimate carrot, the opening of accession negotiations. Observing variation alone however does not carry inferences on the very application of conditionality. The comparison's results allow for case selection for the empirical test: full variation – both temporal and spatial – is only present with regard to Stabilization and Association Agreements (SAAs) that were concluded with all countries of the region and that were subject to explicit conditionality.

3.2 Operationalizing Conditionality

Conditionality is operationalized on an indicator level. The subsequent sub-sections introduce the four indicators and discuss their methodological appropriateness. The indicators encompass the temporal as well as spatial application of conditionality by zooming into the institutional setup that shapes bilateral contractual relations with membership aspiring countries: The unit of analysis draws on the conclusion of bilateral agreements concluded between the EU and the individual countries of the Western Balkans. The conclusion of an agreement, however, does not tell much about the nexus between the objective of upgrading the status quo and the fulfillment of conditions necessary. For this reason, the indicators zoom in between setting conditions and their very fulfillment. Building on the aforementioned theoretical propositions of an incentive-based approach, I expect to observe the following four indicators:

3.2.1 Indicator I: Determinacy of Conditions

In order to measure conditionality consistently applied I expect the Council to condition the conclusion of bilateral agreements and to set determinate requirements. These need to be unambiguous and identical to all countries offered identical agreements as rewards.

In order to be consistent, the Council

- Sets conditions for increased cooperation taking the form of bilateral agreements
- Sets identical conditions for all countries of the region at least for the respective type of agreement (spatial) AND at the same time (temporal)
- Sets clear benchmarks thereby differentiating for the domestic status quo

The first indicator maps' incentives set and requirements necessary to fulfill. In doing so, consistency is not to be confounded with conformity: variation might be present because of differentiation among the countries. In order to qualify as consistent I expect a lower expectancy regarding the quality of conditions fulfilled.

3.2.2 Indicator II: Monitoring Compliance

I expect the Commission to monitor the country's performance in meeting the Council's requirements on an individual basis in annual reports. I also expect the Commission to engage in on-the-ground country specific assessments in order to judge the individual performance of the countries.

In order to be consistent, the Commission

- monitors all items on the Council's list of requirements
- makes country-specific assessments with judgment for the respective type of agreement (spatial) AND at the same time (temporal) once it finds requirements fulfilled.

It is important to note that the empirical measurement of indicator II does not engage in an on-the-ground assessment on whether or not an actual compliance has been reached: The analysis is limited to the Commission's very own assessment of compliance or fulfillment with the conditions set by the Council. To repeat, the analytical take here is on empirically determining the application of conditionality instead of treating it as constant.

3.2.3 Indicator III: Recommending the Reward upon Compliance

The Commission's monitoring efforts and any operational conclusion recommending the advancement of bilateral relations need to be distinguished analytically for two reasons: Whereas the monitoring is assumed to be an internal act conducted within the Commission only and with full competence, any judgment of advancement of relations has a different institutional logic: Commission might have other interests in advancement of relations than the member states in the Council actually processing the reward. Secondly, temporally following the Commission's operational conclusion, the member states may either approve the Commission's recommendation or their judgment might differ with regard to the advancement of cooperation.

In order to be consistent the Commission

- issues country-specific operational conclusion
- bases its operational conclusion on progress in fulfilling the Council's requirements in that it recommends advancement of relations only if conditions are fulfilled.

Assuming a merit-based approach, the finding that conditions are fulfilled serves as a necessary condition for consistent application of conditionality.

3.2.4 Indicator IV: Credibility of Threats and Promises

Upon completion of the country-per-country comparison, the Commission's assessment is confronted with the Council's decision to grant the reward promised taking the form of a bilateral agreement. If the necessary condition of fulfillment of conditions is fulfilled, the

Council is expected to match deeds to words. If consistently applied, the Council had set determinate requirements for each agreement; the Commission had monitored the country's compliance accordingly and had issued operational conclusions on the advancement of relations in line with its assessment of compliance in fulfilling conditions. If further applied consistently, the Council approves the Commission's operational conclusion and eventually starts the process of advancing bilateral contractual relations. In the absence of compliance as measured by the Commission, the Council is expected to exert negative measures such as the postponement or cancellation of negotiations depending on the status quo reached in the run-up to the conclusion.

In order to be consistent, the Council

- confirms the Commission's judgment on progress
- acts according to the Commission's operational conclusion
- acts within the promised rewarding scheme on the very next level for the respective type of agreement (spatial) AND at the same time (temporal) once the Commission found full compliance
- exerts positive measures only in the presence of full compliance

3.2.5 Level of Measurement

The level of measurement adopts existing theoretical propositions that measure conditionality according to a dichotomous scale where the application can be consistent or not. The theoretical propositions also elaborated on dichotomous scales used in the literatures. Accounting for the inductive approach of measuring the very application thus sticks to the existing measurement.

The case for inconsistency is not necessarily in setting different sets of conditions in order to account for a specific domestic status quo that might cause differentiated treatment of individual countries. Differentiated treatment along the four indicators over time and across countries might still be consistent as long as there is no variation across the various agreements. If countries receive different conditions either at the same time AND/OR over the

various steps (variation on indicator I) that are later subject of consistent monitoring and rewarding, conditionality would be found to be consistently applied.

The strongest case for inconsistency is as follows: If the Commission's over time assessment (indicator II) reveals no progress in meeting EU requirements thus concluding that more compliance is needed (indicator III) but the Council irrespectively opts for intensified cooperation in the temporal vicinity of these findings (indicator IV). Again, the consistency argument prominently rests on the finding of conditions fulfilled prior to any intensification of cooperation. Measuring compliance instead is not necessary in determining the application of conditionality. If even the Commission and the Council do not find conditions fulfilled, measuring actual compliance promises no further insight to the research question. Measuring the application of conditionality thus follows an empirical logic rendering normative considerations on how it should operate less relevant with regard to this projects research question.

The following table presents indicators and observable properties of the conditionality concept and the dichotomous values for consistent application.

Measuring Consistent Application of Conditionality				
Indicator	Institution	Observation	Test for Consistent Application	
			Across countries	At the same point in time
I	Council	Setting determinate Requirements	Identical for all countries for each type of agreement	
II	Commission	Explicit comment on items on list of requirements monitoring compliance	Annual Monitoring of Conditions for the next step of contractual relations	

III	Commission	Presenting operational conclusion	Recommendation to advance based on fulfillment of conditions (compliance) only:		
				Compliance	Non-compliance
			Recommendation	Consistent	Inconsistent
			No recommendation	Inconsistent	Consistent
IV	Council	Credibility of threats and promises	Conclusion of agreement identical for all countries based on Commission's recommendation:		
				Recommendation	No recommendation
			Reward	Consistent	Inconsistent
			No reward	Inconsistent	Consistent

Table 3.2: Measuring consistent application of conditionality

3.3 Data

3.3.1 Bilateral Agreements

Chapter four spatially compares all agreements concluded between the EU and the countries of the region. To that end, treaty text were drawn from the EU's Official Journal or EURlex database, both sources are available online. In cases where agreements were not ratified and thus not yet published in the Official Journal I drew on the Commission's proposal and the Council's conclusion of the respective legal act.

3.3.2 Indicator I, IV

In order to measure the setting of conditions I analyze the respective conclusions of the European Council, the General Affairs Council (GAC) or the General and External Relations Council (GAERC) in paper or electronic form. Those conclusions not published on the Council's website were individually requested at the Council's secretariat.

3.3.3 Indicator II, III

The EU's judgment of the individual country's domestic performance is drawn from document analysis. The method is content analysis that is typically concerned with the „middle phase of a three-step communication process: (1) various motives produce (2) a

message that is (3) intended to express these motives and/or to produce various effects upon a designated audience” (Mitchell 1967: 236). The focus here is on the EU’s judgement whether a condition is fulfilled or not. I am not interested however in the motives producing the conditions in the first place as I take them as part of the EU strategy and thus as a given. The primary concern then is on making inferences about the relationship between messages and the results in terms of action they produce. The numerous obstacles in content analysis are taken into account: I am aware that the materials under investigation are not the result of a structured stimuli rendering the information typically incomplete regarding the verifiable item being measured. The second serious problem to be dealt with is the use of vocabulary: I cannot assume that the words used in the reports carry a „constant meaning independent of the purpose for which they were designed” (Mitchell 1967: 241). In order to avoid measurement bias the document analysis contains both a factual observation and a qualitative judgment. The factual observation builds on the EU’s list of verifiable elements that translate the list of conditions to smaller pieces. I thus qualify the wording as monitoring only if the report explicitly mentions a specific condition of the verifiable elements list. Only if it does, I measure whether the respective element is „fulfilled” or „not fulfilled”. The third instance „partly fulfilled” is to include the Commission’s judgment on whether or not the fulfillment of a condition is anticipated to be fulfilled at some point in the future. I may thus distinguish between cases of non-compliance, where conditions are generally not fulfilled and those where conditions are not fulfilled, but where the arrow points towards fulfillment in the future.

Further specification such as qualifying the fulfillment of a condition as being endangered or existing in only some parts of the countries would be suitable to account for domestic disparities but would render the document analysis too complex with only little more variation to be mapped. These findings are aimed at a fine grained assessment of fulfillment monitored; each judgment entails an exhaustive list of vocabulary assigned to it. To be clear about the benefit and scope of analyzing the Commission’s monitoring reports, this step is not meant to account for domestic conditions in its own right but for assessing progress from the Commission’s very own perspective. It is thus not the impact of EU conditionality on the partner country’s grounds, but how it is perceived through the lenses of those that set the conditions in the first place.

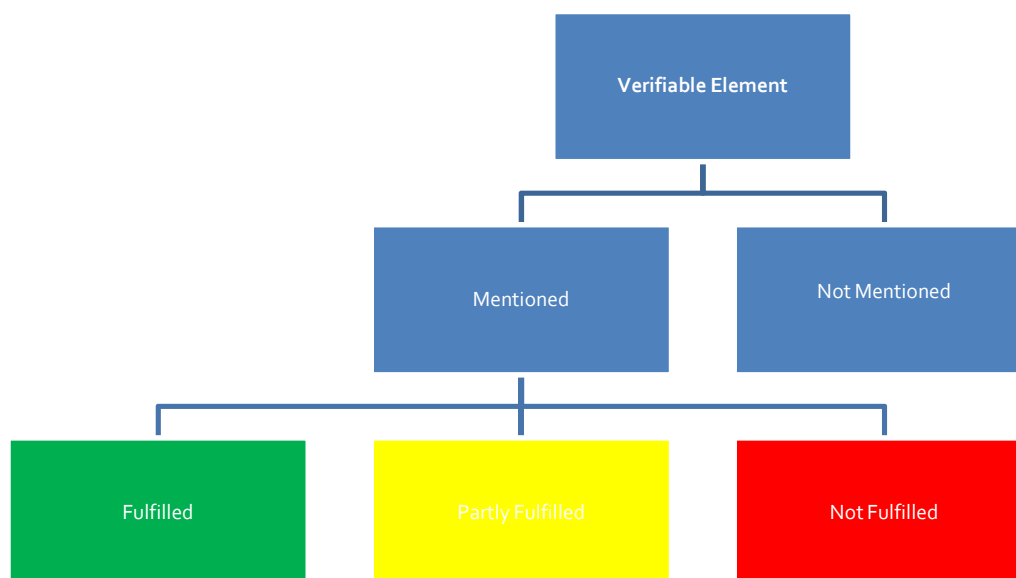


Figure 3.3: Document analysis of the Commission's reports

Fulfilled	Partly Fulfilled	Not fulfilled
According to int. standards	Acceleration of ...	Absence of ...
Aligned with ...	Acceptable	Abuse of, subject of abuse
Almost fully achieved ...	Active pursue of ...	Arbitrary action
Appropriate	Adoption of ...	Attempts to distort
Are	Advancement, well advanced	Barely begun
Assured ...	Almost complete	Belied by ...
Basically guaranteed	Almost complete	Blocked
By and large	Approaching final target	Burdened
Complete	Broadly constructive	Compliance patchy ...
Completed / Completion	Commitment to	Compromized
Conducted generally in line with ...	Compliance uneven	Concentration of ...
Considered ...	Considerable degree of ...	Concerns about/ over ... / cause for concern
Constructive approach to ...	Consolidation of ...	Crisis ...
Continued pursue ...	Continuation of ... / Continued ...	Culture of confrontation
Continued stability of ...	Continues to ...	Deadlocks
Continuously good	Delay in ...	Delays in ...
Efficient implementation	Difficulties in ... /fraught with difficulties	Denial of .../ Denied ...
Engagement in ...	Efforts continued	Deterioration of ...
Established ...	Enaction of legislation	Disagreements (pervasive) over
Exists	Encouraging ...	Discriminatory regulations
Full cooperation	Ensured ...	Dominance of ...
Guaranteed for ...	Expansion of ...	Doubts over
In line with	Experiencing difficulties	Enforcement poor
Is ...	Far from completion	Enforcement poor
Largely complete	First positive steps in ...	Failure to ...
Largely in line with	Formally incorporated	Falls short of required standard

More or less complete	Further progress / overall progress	Far from normalization
Needs to become more professional	Gaining momentum	Fears of limitations
Observed, largely	Generally in line with ...	Fraud and manipulation
Presence of/ present	Guaranteed for, but ...	Frozen
Properly exercised ...	Hampered by ...	Generally poor ...
Protected by ...	Implementation not secured / insufficient / with remaining problems	Hurdles to ...
Provided for ...	Implemented with mixed results	Ill-defined
Put in place	Improvement of ...	Imperfect application of ...
Recognition, wide	Increasing / Increased	Implementation deficient
Respect of .../ respected	Indications of ...	Implementation not yet begun
Satisfactory level of ...	Insufficient respect	Implementation not yet started
Strong track record in ...	Is encouraged	Imposed by OHR ...
Success in ...	Law is being prEPred	Impossible to ...
There is	Legislation drafted / in place/ harmonized / law being prEPred	In need of restructuring
Total ...	Little activity ...	Inadequacy with regard to .../ inadequate to ...
Under control ...	Maintained ...	Incapable of ... / Incapacity to ...
Usually	Maintenance of ...	Infringed
Yes,	Modest reform in ...	Insufficient
	Needs to be ...	Intimidation
	No further ...	Jeopardized
	No significant problems except ...	Lack of ... commitment / resources / independence / ... lacking
	Not applied/ no application	Legally guaranteed but violated
	Not completely appropriate	Limited functioning / degree
	Not entirely adequate	Marked by irregularities
	Not supportive of ...	Marred by reluctance
	Not yet / fully ...	Misconduct
	Not yet / not yet complemented / established	Negative effects
	Number of exceptions	No ...
	Operational	No accurate reflection of ...
	Parliamentary procedure in place (discussion of draft law ...)	No application in practice / partial application
	Partial adoption	No change in attitude
	Partial respect of ...	No compliance with ...
	Positive attitude towards ...	No cooperation
	Pre-conditions created	No full account of ...
	Problems exist in ...	No hints to ...
	Problems with ...	No improvement
	Proceeded broadly ...	No progress
	Process (Revision, progress, work) underway, has begun,	No respect of ...
	Progress (substantial ... significant) in ...	No revision of ...
	Progress uneven	None, not existent
	Promotion of	Non-existence (there is no)

	Proved difficult	Not (fully) implemented
	Provided for ...	Not equitable applied
	Readiness to ...	Not established
	Reform in ...	Not guaranteed
	Relative progress	Not in line with int. norms
	Remains vulnerable	Not met benchmarks
	Restored gradually	Not responded to ext. pressure
	Results yielded	Not rooted
	Room for Improvement	Not satisfactory
	Satisfactory ...	Not yet adopted
	Signs (evident, encouraging) of ...	Not yet introduced ...
	Some improvement, inadequacies	Nullified
	Still at early phase ...	Outstanding
	Still high proportion of	Overall instability
	Still partly limited ...	Possibility of arbitrary abuse
	Still under preparation	Process flawed /
	Strengthening of ...	Progress belatedly and limited
	To be completed	Progress disappointing
	Widely completed but	Refusal to ...
		Remains critical
		Remains problematic
		Resistance to ...
		Restricted
		Rifts over ...
		Rights denied
		Setback in ...
		Some way off
		Stalled
		Still a problem
		Struggling with ...
		Suffering from ...
		Threats are mounting
		Unchanged
		Undermined
		Unresolved issues, not solved
		Unsatisfactory
		Unworkable
		Used for political purpose
		Very few cases of ...
		Violations of ...
		Volatile
		Weak/ Weakness in

Table 3.4: Coding for measuring fulfillment of conditions

3.4 Measurement Problems

Fulfilling any set of requirements is a procedural endeavor. Indicator II comments on this process at one specific point in time, namely when the annual report is due for publication. Consistent application expects the Commission's recommendation to advance bilateral contractual relations once it finds a country having made "sufficient progress" (Blockmans 2007: 255). The term "progress" carries an evolutionary notion building on a comparative judgement of at least two points in time. Given that the report's wording varies and is further imprecise in terms of progress made, I propose to analyze the respective country reports for fulfillment of each verifiable element as listed by the Council. Fulfillment of a condition does not compare the development of monitored items over time but states, whether any monitored item is present or not in the year in question. In the Commission's wording, the interesting question here is whether a condition is fulfilled or not rather than conceptualizing a process of improvement.

The general concern over the measurability applies to the entire set of compliance reports under investigation: As I will show in chapter five, the items on the list of verifiable elements vary considerably with regard to being either crisp or rather having an evolutionary character: "elections" – at best held once a year even in the most fragile of all countries – may be found to be conducted free and fair, but what happens to items that are not as crisp, as whether or not a country's authorities "act according to the constitution"? The greater the distance to the desired status, the first step is for the Commission to notice whether or not there are adequate constitutional provisions and by-laws that are – on paper – fulfilling the respective condition. The question, whether or not they are properly enforced on the ground is a different matter: Even though the Commission is clear in declaring that implementation, not legislation alone matters, she can only but comment on draft legislation if there is no enforcement to be measured in the first place (cf. European Commission 09.11.2005: 4). A second black box is the Commission's handling of cases where the fulfillment of conditions varies within countries: Requirements could be fulfilled on the local or regional level while national authorities would not enforce them. If this is not explicitly commented on in the report's qualitative judgments it might not be taken into account at all.

The merit of this document analysis with all methodological challenges attached to it is a spatial as well as a temporal comparison on the application of conditionality: the case selection defines the mentioning of a verifiable element of the list of the EU's conditions as a unit similar to all countries under investigation. It compares spatially, in that the today six countries of the Western Balkans all underwent the same type of institutionalization in concluding bilateral contractual relations. The temporal comparison is conducted on a country-per-country basis. In providing systematic empirical measurement of conditionality the study contributes to our social as well as theoretical understanding.

4 Bilateral contractual Relations: the Outcome

So far, I outlined research question as well as research strategy to arrive at inductive findings on the application of conditionality. Building on existing research presented in the theoretical framework it proved difficult to establish a distinct level of abstraction that tells whether conditionality is applied consistent or not. In this chapter, I seek to identify cases for further analyzing the application of conditionality in opening up the black box of contractual relations between the EU and the countries of the Western Balkans between 1996 and 2011. In order to conduct a comparison, the agreements under scrutiny have to meet three criteria: firstly, they need to have binding legal character taking the form of bilateral agreements. Second, they have to be available to all countries in question, at least theoretically. Thirdly, they need to be subject to explicit conditionality as proposed by the Council. It will be shown that only Stabilization and Association Agreements (SAAs) qualify for an over-time and spatial comparison as all other agreements either have not been concluded with all countries of the region or are not subject to explicit conditionality.

First it is important to consider the outcome in bilateral contractual relations. As one of the economically and socially most advanced countries of Middle and Eastern Europe, the People's Republic of Yugoslavia profited from Preferential Trade Measures granted by the European Community in 1974; a Trade and Cooperation Agreement was accorded in 1980. In 1989 "Yugoslavia was one of the wealthiest and most open countries in the communist world" (International Crisis Group 01.04.2001: 3). When the break-up of Yugoslavia had ended in bloodshed, the political map saw the rise of three newly independent countries, Croatia, BiH and FYROM as well as the remains of Yugoslavia, that underwent two constitutional reforms in the following years.

With Albania being an exception, all four started off with no contractual relations at all. The table below maps all rewarding steps vis-à-vis the Western Balkans between 1996 and 2010. The order follows the sequential logic of contractual relations advancing from Cooperation to Association and ultimately the membership process with the positive *avis* of the Commission being the entry hurdle. Three out of six countries are recognized as official candidates to membership – Croatia, FYROM and Montenegro. Negotiations with Croatia are well

advanced, while those for FYROM are expected to start in 2011. In the Montenegrin case, the Commission has not yet recommended the start of negotiations. Albania finds itself in a grey zone between potential and official candidacy: although the country received the Commission's avis on 9 November 2010, it has not yet been recognized as an official candidate (European Commission 09.11.2010). The other two – Serbia and BiH – lag behind.

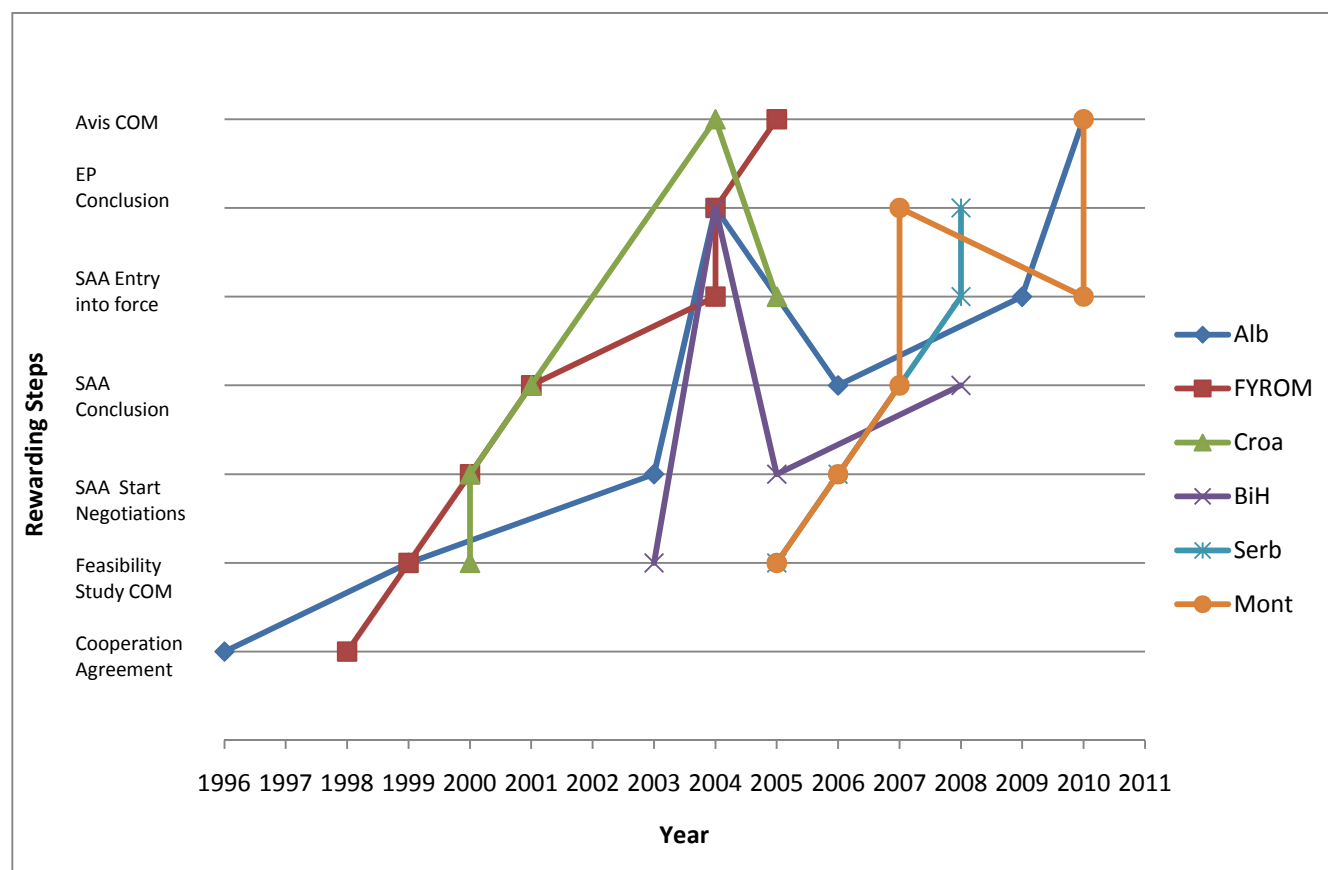


Figure 4.1: Development of bilateral contractual relations

Colored in dark red, FYROM is the only country of the region that actually managed to take each step in a subsequent fashion. The country was second out of two in signing a Cooperation Agreement that entered into force January 1998 (European Community 18.12.1997).³ Shortly after, FYROM concluded an Agreement on Trade in textile products in May 1998 (European Community 18.05.1998)⁴

³ OJ 1997 L 348.

⁴ OJ 1999 L344/2.

It took only two years, from 1999 to 2001 and another three years until the SAA was concluded and then implemented. FYROM was thus the first country to sign its SAA in April 2001 (Council of the European Union 26.03.2001).⁵ Simultaneously, an interim agreement of trade and trade-related matters entered into force in June 2001.⁶ The country took the lead role in negotiating the first agreement of its kind. The Commission's positive avis as well as the granting of official candidate status followed the implementation. The development of bilateral relations between FYROM and the EU thus perfectly presents the logic of sequentially increasing cooperation as envisaged by the Council.

The blue graph presents the second non-war adversary country in the region, Albania, whose graph differs from the aforementioned as it 'departs from the EU's sequential rewarding logic. Having signed a Trade and Cooperation Agreement already in 1992⁷ the Commission opened negotiations on Albania's SAA on 31 January 2003 but talks stopped only little later. Negotiations were concluded on 18 February 2006, the SAA was then signed on 12 June 2006 (Council of the European Union 22.05.2006). The European Partnership (EP) of 2004 was signed before the SAA entered into force, a clear departure from the logic of sequentially increased cooperation. Like in the aforementioned case, trade and trade-related provisions of the SAA came into force immediately after signing the agreement.⁸

In summer 2006, three out of by then six countries maintained contractual relations with the EU. The graphs for the remaining three countries reveal on first glance that the advancement of cooperation of the Dayton signatories kicks in significantly later; four years in the case of Croatia and nine years in the cases of BiH and Serbia-Montenegro. Furthermore, none of these three countries concluded a cooperation agreement, the agreement offered within the Regional Approach.

Croatia, in green, presents the case of the clearest departure of the EU's sequential logic of enhanced cooperation. The country was second to sign its SAA, entering into force in February 2005 (Commission of the European Communities 09.07.2001).⁹ The status of an

⁵ OJ 2004 L 84 of 20.3.2004.

⁶ OJ 2000 C 339/266 of 01.06.2009.

⁷ OJ 1992 L 343/1 of 01.12.1992.

⁸ OJ 2006 L 239 of 01.09.2006.

⁹ OJ 2005 L 26 of 28.01.2005.

official candidate to membership was however granted in 2004 while implementation of the SAA was still underway but not yet concluded. While all other countries were offered European Partnerships in 2004, Croatia was the first to take the ultimate stepping stone towards the accession process.

BiH, in orange, is the last but one in line: it took an entire decade after the Dayton agreement to conclude bilateral contractual relations: BiH was the last in line to sign an SAA in June 2008 (Council of the European Union 06.06.2008).¹⁰ Like in the aforementioned cases, an interim agreement on trade and trade-related matters went into force upon signature.¹¹ In spring 2011 the SAA has not yet entered into force, implementation has thus not even started.

FRY was not welcomed as a full participant to the SAP before October 2000 following the extradition of Slobodan Milosevic to the ICTY in The Hague. Serbia-Montenegro is therefore, last in line as concerns speed and scope of bilateral contractual relations with the EU. While SAA negotiations had started with the State Union of Serbia-Montenegro, negotiations were modified to the so-called twin track approach, allowing Serbia and Montenegro to negotiate individual agreements after its dissolution in 2006.

Following Montenegro's declaration of independence in May 2006, the EU concluded an interim agreement on trade and trade related matters that entered into force in January 2008.¹² This Agreement applied on a provisional basis as of 1 January 2008. Newly independent Montenegro signed its SAA in October 2007 (Council of the European Union 21.09.2007) Upon ratification in all member states, the SAA entered into force in May 2010.

Serbia resumed talks on an SAA in June 2007 and finally signed its agreement the same month (Council of the European Union 29.04.2008).¹³ As an exceptional case, ratification did not start straight after as in the previous cases. Ratification started in June 2010 but there is yet no date presented for the agreements entering into force.

¹⁰ BiH's SAA has not been published in the OJ as it is not yet in force.

¹¹ OJ 2008 L 169/10 of 16.06.2008.

¹² OJ 2007 L 345 of 28.12.2007.

¹³ Serbia's SAA has not been published in the OJ as it is not yet in force.

On first inspection, it seems that there is no such thing like a rewarding pattern indicated by a linear rewarding strategy for each country. In a cross-country comparison, the time spans between the individual rewarding steps differ, too. In an over-time perspective, 2004 suggests the strongest rewarding activity on behalf of the EU. However, on first glance, the figure suggests a differentiated rewarding practice, both spatially and temporally compared. Yet the fact that there is differentiation carries no inferences on the application of the underlying conditionality principle. The following sections thus qualify the above mentioned agreements with regard to its content and whether or not they are subject to explicit conditionality.

4.1 Mapping contractual Relations: the legal Background

I focus only on contractual relations concluded on a bilateral basis and offered to all countries of the Western Balkans on equal terms. Between 1996 and 2009 two types of agreements have to be distinguished: Trade and Cooperation and Agreements that were offered within the regional policy approach and Stabilization and Association Agreements (SAAs) within the SAP framework. European Partnerships (EPs) offered by the Thessaloniki Summit are no legally binding agreements – despite the misleading label. They do not qualify as agreements, they have not been offered to all countries in question and they are not subject to conditionality. EP's were not rewarding compliant behavior but rather helped governments streamlining their reform efforts in order to reach the *next* step on the way to increased cooperation. Therefore, EP's do not qualify for spatial comparison.

Without diving deeply into legal considerations I shall only briefly deal with the legal character of the bilateral agreements presented and the question of the EU's legal personality: There are essentially two legal sources of adopting international agreements: Firstly, the European Communities as an international organization with legal personality may enter commitments and obligations with third countries, a group of countries or any other organization. The international dimension of its legal personality or the external competence was recognized from the beginning marked by the Treaty of Rome (Cremona 2002: 7). The European Union, however, as a legally distinct apparatus has as one its objectives 'to assert its identity on the international scene' without being attributed with an explicit legal personality stemming from the treaties as is the case for the European Communities (Cremona 2002: 8). Secondly, the treaties provide a "constitutional provision, at an internal level, of competence

to act in specific ways, in specific areas of policy, and by specific legal means” (Cremona 2002: 7). Included in this category are bilateral contractual relations within the Stabilization and association process, namely trade provisions, assistance and the SAAs.¹⁴ Due to the complexity of external competences and the subjects that are covered, the majority of all agreements are mixed agreements, falling under the above mentioned second source of treaty making competence. If categorized content-wise, the agreements are free trade agreements, cooperation or association agreements.

4.2 (No) Strings attached? Credibility, Size and Speed of Rewards

The following table maps all bilateral agreements the EU has at its disposal towards third states or non-members according to size and credibility of incentives. Prior 1989 the EU’s relation towards Central and Eastern Europe did not envisage the conclusion of contractual relations at all. The credibility and size of the incentives' increases from Cooperation Agreements to conditional partnership agreements (1/1) to association agreements (2/2) to a membership perspective (3/2) that is eventually followed by accession negotiations (3/3).¹⁵ The last two – membership candidacy or opening of negotiations – do not qualify in light of the three conditions formulated above as not all countries reached the accession process as official candidates. For this study, they are left out the spatial comparison.

¹⁴ For a detailed assessment on the EU and the question of its legal personality compared to the European Communities see Cremona 2002. For the new provision contained in the Lisbon Reform Treaty and the implications see Wouters et al. 2008: 143.

¹⁵ For easier reading, the respective agreements are underlined.

	Credibility of Incentives		
	0	1	2
0	No tangible Incentives: Relations with Central and Eastern Europe before 1989		
1	Partnership (minor economic and financial incentives) without political conditionality: <i>Relations with Mediterranean Countries before 1995</i>	Conditional Partnership with Low Credibility of Threats and/or Promises: <i>Partnership and Cooperation Agreements with post-Soviet State</i>	Conditional Partnership with High Credibility of Threats and/or promises: <u><i>Trade and Cooperation Agreements with Central European and Balkan Countries</i></u>
Size of rewards	Association (including market access and financial assistance) without political conditionality	Conditional Association with Low Credibility of Threats and/or Promises: <i>Euro-Mediterranean Association Agreements</i>	Conditional Association with high credibility of threats and/or promises: <u><i>Europe Agreements, Stabilization and Association Agreements</i></u>
2			
3	Membership without Political Conditionality	Conditional Membership with low credibility of promise: <u><i>General Membership Promise without Candidate Status</i></u>	Conditional Membership with high credibility of promise: <u><i>Membership Candidacy, Opening of Accession Negotiations</i></u>

Table 4.2: Adapted from Schimmelfennig and Scholtz 2008: 196

Interestingly, the authors group Europe Agreements and Stabilization and Association agreements in the same category of size and credibility, a fact that is doubted in the subsequent analysis. However, in line with the EU conditionality strategy I would expect the conclusion of each type of bilateral agreement with each of the countries applicable, in the present case with the countries of the Western Balkans. Their conclusion would follow the above order in that the agreements would increase in size and credibility as a reward for complying with EU requirements.

4.2.1 Trade and Cooperation Agreements

In the mid-90s, the newly independent successor states on the territory of Former Yugoslavia did not maintain any contractual relations with the EU, except for Albania. Whereas neighboring countries of the region like Slovenia, Bulgaria or Romania were already in the waiting line for accession or close to signing Europe agreements, it was hoped that grouping together those without a negotiation directive for association agreements would not hinder the more advanced.

Romania and Bulgaria signed a Europe Agreement back in 1993, Slovenia was negotiating its agreement in March 1995. The regional policy approach towards the Western Balkans thus grouped together former war adversaries, FYROM and Albania, even though the latter did have an Agreement on trade and commercial and economic cooperation dating back to November 1992. For that reason, Albania was the only country that belonged to neither the one nor the other group rendering it the only country outside former Yugoslavia that would be eligible to join the regional approach. In sum, extending the associations to the Western Balkans in the mid-90s was no option if disappointments in countries already maintaining contractual relations were to be avoided. But:

“(...) it was hoped that the prospect of a cooperation agreement, enabling them to gain improved access to the Internal Market for a large number of their products, would serve as an incentive both for economic reforms and increased regional cooperation” (Pippan 2004: 222).

First of all, it is questionable whether both agreements compare regarding content, especially with regard to the application of the conditionality principle. While the very point of its coming into effect places the Albanian agreement outside the scope of the Regional Approach, FYROM's agreement does reflect a clear notion towards even more advanced bilateral contractual relations thus supporting the gradual rewards' logic of Schimmelfennig and Scholtz. The agreements with Albania and FYROM were concluded under the same treaty provision, Art. 113 TEC on trade, but vary with regard to the overall context: while FYROM's treaty provisions clearly open the door to a future accession and thus to the next available reward in bilateral contractual relations, Albania's agreement does not carry this notion. Both, however, fall within the exclusive treaty making competence of the European Community which means that the Council's approval replaces ratification in the member states.

Albania's non-preferential Agreement on trade and commercial and economic cooperation came into effect on 1 December 1992.¹⁶ Contrary to the Commission's later statement, the agreement does not explicitly include an evolutionary clause (cf. Commission of the European Communities 02.10.1996: 9). Rather, there is a cautious hint in the agreement's preamble:

"[...] Believing that a further impetus should be given to the trading and economic relationship between the Community and Albania by establishing contractual links which will contribute to progress towards the objective of an association agreement in due course, when conditions are met, and to further development of relations between them [...]" (European Economic Community 11.05.1992).

Second in the region, FYROM signed its Preferential Cooperation Agreement on 29 April 1997 and thus in the early years of the EU's regional policy approach. Contrary to Albania, the one concluded with FYROM contained a financial protocol and an evolutionary clause:

"The Contracting Parties shall examine, in due course, when conditions are met, the possibility of strengthening their contractual relations, bearing in mind the aspiration of the former Yugoslav Republic of Macedonia for an advanced relationship towards an association with the European Community" (European Community 18.12.1997: Art. 45).¹⁷

Substantial differences also prevail regarding the essential-elements clause in Art.1 within both agreements: in the Albanian case, there is a one-sentence reference to the respect for democratic principles and human rights (cf. European Economic Community 11.05.1992: Art. 1). In FYROM's agreement, the essential elements are stated in the preamble as well as in Art. 1, while the same is to apply to the principle of market economy (cf. European Community 18.12.1997: Art. 1). The scope of the essential elements is thus far reaching compared to Albania's agreement. Lastly, the explicit requirement of regional cooperation and good neighborly relations present a new departure in Cooperation agreements pointing to the application of conditionality.

¹⁶ OJ 1992 L 343 of 11.05.1992.

¹⁷ OJ 1997 L 348 of 29.04.1997.

	Albania	BiH	Croatia	FYROM	FRY
Existing bilateral agreements	Non-preferential Trade, Commercial and Economic Cooperation Agreement		-	-	
Cooperation Agreements under Regional Approach			Opening of negotiations on Trade and Cooperation Agreement in March 1995; Suspended in August 1995	Cooperation Agreement between the European Community and FYROM	
Coming into effect	01.12.1992			01.01.1998	
Essential elements					
Financial Protocol	No			yes	
Evolutionary Clause	yes			yes	
Reference to Regional Cooperation	No			yes	

Table 4.3: Cooperation Agreements compared

The above table maps the countries eligible for Cooperation agreement under the Regional Approach. FYROM was the only country that concluded the envisaged type of agreement in 1998 while negotiations with Croatia were suspended after the Croatian military offensive in the UN protected areas (Krajinis) in August 1995. Moreover, FRY and Croatia were not even considered for financial PHARE funding not to mention the possibility of concluding bilateral contractual relations.

The fact that the Albanian agreement is not comparable regarding content and application of the conditionality principle leaves FYROM as the first in line having established bilateral contractual relations under the conditionality principle. Variation, therefore, cannot be

determined for a conditional partnership with high credibility of threats and/or promises as Albania's agreement does not fall within this scope. The crucial distinction here is the application of conditionality: while FYROM's Cooperation Agreement contains an essential-element clause, evolutionary clause as well as the explicit requirement of regional cooperation, the advancement towards an association is unquestionably linked to fulfilling the respective requirements.

At the end of 1998, the bilateral relations map of South Eastern Europe could not have been more diverse:

“...the EU's relations with the countries of the wider Balkan region presented an astonishing variety: a full EU member (Greece); a member of the first wave of enlargement applicants (Slovenia); two members of the second wave of enlargement applicants (Bulgaria and Romania - also participating in the European Conference); a membership applicant, whose eligibility for negotiating entry was denied by the EU (Turkey - not participating in the European Conference); two members of the Regional Approach with a trade and cooperation agreement with the EU (Albania and FYROM); a member of the Regional Approach eligible for PHARE funding, but without a trade and cooperation agreement with the EU (Bosnia); a member of the regional approach with neither PHARE eligibility nor a trade and cooperation agreement with the EU (Croatia); and a country without any official contacts with the EC (FRY)” (Papadimitriou 2001: 76).

The state of play of relations in early 1999 presented a double dilemma: Firstly, the EU's regional approach proved dysfunctional as it could not prevent yet another outbreak of violence as it worked with the consequences instead of the reasons of conflict in the region (cf. German Foreign Minister Joschka Fischer in a Press statement of 11 June 1999 quoted in Biermann 2001: 924). Secondly, the EU's attempt to include all countries of the region into one policy framework forcing them to cooperate with each other had rather split the countries in groups than uniting them (Altmann 1998: 506).

4.2.2 Stabilization and Association Agreements

The Stabilisation and Association agreements (SAAs) were introduced by the Council in May 1999 in the EU's effort to meet a double goal: firstly, they were to enrich the existing regional policy approach with the “by far the most important and most prestigious instrument” of the policy process (Pippan 2004: 233). At the same time, content and shape of the special-type association agreement were to keep down aspirations for a short-cut to accession.

Association in general carries common features: they establish institutional frameworks that tend to have the same structure. Secondly, they are increasingly drawing on the partner countries law approximation and harmonization or the use of conditionality (cf. Phinnemore 1999: 116). Beyond these common features, the scope and speed of this process differ from one associate to another thus rendering it necessary to infer only from individual cases. The agreements' bilateral character thus provided opportunities for different speeds of rapprochement as the term "tailor-made" suggests (Priebe 2002: 193). Given that the pathway to the agreements' conclusion is determined by compliance with conditions set by the EU, they might well function as "dynamic framework...paving the way for enlargement" (Phinnemore 2003: 103). Here again, tailoring an agreement to aspirations as well as to the needs of the associate does not tell about the very application. Due to their legal character as mixed agreements, the room for differentiation within the agreements lies in the hands of the General Affairs Council that negotiates the individual agreements; the Community only accords the agreement's framework within which negotiations are to be conducted (Hoffmeister 2006: 131). The Europe Agreements, for instance, clearly showed that despite the CEECs desire to enter a clear commitment to membership into the preamble the Union would refuse to do so (Phinnemore 1999: 116). Given that any new agreement would necessarily be based on the same legal provisions for mixed agreements with third states, it was clear from the outset that the earlier Europe Agreements served as a role model.

"Yet although with the SAAs the EU is ostensibly intent on creating a new type of association arrangement, specifically for the countries of the Western Balkans, analysis ... shows considerable similarities with the earlier Europe Agreements" (Phinnemore 2003: 80).

Compared with Cooperation and Association agreements that were offered before, it was clear that the new type would have to offer an intensified form of association compared to the Cooperation Agreements with Albania or FYROM (Ott 2002: 206). The modest outcome in establishing bilateral contractual relations strongly called for a departure from existing legal arrangements as only two out of five countries had signed a Cooperation Agreement. By the time the SAAs were introduced, all countries that had signed Europe Agreements were already engaged in the enlargement process. Offering the very same agreements to the Western Balkans would have meant raising expectations to the top level by talking about enlargement from the very first moment. Offering less than that would have carried yet another problematic notion in directly neglecting the ultimate goal of accession, namely membership. Differences between Europe Agreement and SAA thus rest in its underlying

rationale: the Europe Agreements were intended as pre-accession type of contractual relations (Hoffmeister 2006: 129). The preambular references in the SAAs thus vary regarding the long-term-goal of association: in signing the SAA the contracting party was envisaged to receive a “potential candidate” status that goes beyond statements contained in Europe Agreements. On first inspection, the SAAs strongly resemble the Europe Agreements (Marko and Wilhelm 2002, cf. Phinnemore 2003, Hoffmeister 2006). As in the last Europe Agreement signed with Slovenia in 1996, the SAA’s structure with its ten titles is the same with only one exception, title III:

- (I) General principles
- (II) Political dialogue
- (III) Regional cooperation
- (IV) Free movement of goods
- (V) Movement of workers, Establishment, supply of services, capital
- (VI) Approximation of laws and law enforcement
- (VII) Justice and home affairs
- (VIII) Cooperation policies
- (IX) Financial cooperation
- (X) Institutional, general and final provisions

In comparing SAAs and Europe Agreements Phinnemore points out that although single provisions might be named differently or others might not have a dedicated title on their own, the structure is similar in both treaty types (Phinnemore 2003: 82). Introducing title III on regional cooperation is however a novelty in that it becomes “a clear feature” or “explicit condition” (Phinnemore 2003: 85). Interestingly, the introduction of a new title for the Western Balkans leaves room for further differentiation among the countries, at least between the contracting parties of the Dayton.

In sum, the conclusion of an SAA was meant to provide a basis for closer ties with the Union but only foresaw a status that “does not confer on the holder a legally enforceable right to membership” (Blockmans 2007: 281). The level of EU engagement in its contractual relations was thus lower than in Central and Eastern Europe; including yet another five countries to the queue by offering Europe Agreements to the Western Balkans faced only “scant enthusiasm” (Phinnemore 2003: 79). While the EU was quickly approaching the largest round of accession in its history, the Kosovo crisis of 1998/1999 strongly recalled the particular needs of the

Western Balkans as a whole. The crisis demonstrated the stability's fragility in the aftermath of the Dayton agreements. The content of each agreement however is determined by the EU. Hence, drawing inferences on the application of conditionality has to rest on a country-per-country analysis for each treaty in order to account for both individual objectives of the associate and the dynamics of conditionality at work.

In order to allow for a spatial comparison between all countries of the region, I go on determining the variation of conditionality within the agreements. This also involves an over-time-comparison: despite the fact that the agreements were offered to all in 1999, figure 4.1 in the section's beginning displayed the temporal variation in actually concluding the SAAs with the individual countries. Despite this finding the subsequent comparative analysis establishes the backbone of the consistency argument: consistent application of conditionality does not mean identical provisions for all. While trade and trade-related matters are dealt with in Interim Agreements and naturally reflect domestic circumstances, content and scope does not impact on furthering bilateral contractual relations. Aims, objectives and general principles of the agreement however are at the core of conditionality in referring directly to the Council's conclusions.

The table below maps date of conclusion, EC ratification and entering into force in detail. Furthermore it compares basic treaty provisions regarding aims, objectives and general principles including the envisaged time span for implementing legislation. Special attention is drawn to the provision regarding regional cooperation as explicitly including this condition presents a novelty in association agreements. The process is not yet concluded because the SAAs have not yet entered into force in neither BiH nor Serbia. For the purpose of analyzing the application of conditionality however it suffices that the agreements have been signed. Treaty provisions for FYROM, being the first to enter the association, serve as *tertium comparationis* for agreements concluded later on.

SAA's

	Albania	BiH	Croatia	FYROM	Serbia	Montenegro
Existing bilateral agreements prior SAA conclusion	Non-preferential Trade, Commercial and Economic Cooperation Agreement, 01.12.1992; EP, 2004	EP, 2004	-	Agreement on trade in textile products published 18.05.1998	-	EP, 2007
Signed	12.06.2006	16.06.2008	29.10.2001	09.04.2001	29.04.2008	15.10.2007
EC Ratification	26.02.2009	Pending	21.12.2005	25.02.2004	Ratification started only 14.06.2010	29.03.2010
Entering into force	01.04.2009	Pending	01.02.2005	01.04.2004	Pending	01.05.2010
Interim Agreement on SAA-Trade provisions	01.12.2006	01.07.2008	01.03.2002	01.06.2001	29.04.2008, unblocked 07.12.2009	01.01.2008
Essential elements clause (Art. 2)	yes	yes + Art. 3	yes	yes	yes + Art.3	yes + Art.3
Regional Cooperation (Art.3+4)	yes + country-specifications in Art. 5	Yes + country-specifications in Art. 4, 6, 7	yes	yes	yes + country-specifications in Art. 3, 6	yes + country-specifications in Art. 3, 6, 7
Approx. of legislations (Art.5/6/8)	Shall be fully realised over a transitional period of a maximum of ten years, divided into two successive stages. 01.04.2014 01.04.2019	Shall be progressively and fully realised over a transitional period of a maximum of six years. TBD	Shall be fully realised at the latest within six years after the entry into force of this Agreement: 01.02.2011	Shall be fully realised over a transitional period of a maximum of ten years divided into two successive stages: 09.04.2009 09.04.2014	Shall be progressively and fully realised over a transitional period of a maximum of six years. TBD	Shall be progressively and fully realized over a transitional period of a maximum of five years. 01.05.2015

Table 4.4: Stabilization and Association Agreements compared

Hopes and aspirations of the associates are comforted in so far as the SAA's preambles for FYROM, Albania and Croatia contain an identical paragraph reaffirming the notion of "potential candidate" of the Santa Maria da Feira Council as well as a direct link to conditionality:

"[the contracting parties recall]...the European Union's readiness to integrate to the fullest possible extent the [associate] into the political and economic mainstream of Europe and its status as a potential candidate for EU membership based on the Treaty on European Union and fulfillment of the criteria defined by the European Council in June 1993, subject to successful implementation of

this Agreement, notably regarding regional cooperation [...]” (cf. SAA with FYROM Council of the European Union 26.03.2001: 6).

The fact that FYROM and Albania maintained contractual relations by the time of the SAA conclusion does not entail any speedier rapprochement to the Union: if so, the two front runners would have been rewarded a legally binding status instead of repeating the notion of „potential candidate”. Serbia’s, Montenegro’s as well as BiH’s potential candidacy is not “recalled” but only “considered”. What is more, contrary to the earlier agreements of neighboring FYROM, Albania and Croatia, the respective preambular reference contains an explicit link to SAP conditionality as well as to the Copenhagen or accession criteria of 1993 – a nexus that was not written into the earlier agreements. (cf. Council of the European Union 29.04.2008: 5, Council of the European Union 21.09.2007: 5, Council of the European Union 06.06.2008: 5). Regarding the introduction of conditionality into the agreement’s text shows that all Council references to conditionality available at the time of the SAA’s conclusion made it into the texts. Therefore, the later the SAA was concluded the stronger the call for complying with the Council’s conditions in the preambles.

One would have expected that those who agree upon earlier Cooperation or Trade agreements would have received more – given that they had already proven their capacity. The preamble’s references do, however, not draw this distinction. Rather, there is differentiation regarding the conditionality principle in a purely temporal logic. If the Union would have distinguished between Dayton signatories and FYROM and Albania, the latter would also have received a clearer statement.

Differentiation persists throughout the agreement’s general principles: The first paragraph also shows variation beyond the two distinctions of existing bilateral relations and Dayton signatories: Again, the formulation in the SAA concluded with FYROM is amended later.

The aims of the FYROM’s association are spelt out as follows (Council of the European Union 26.03.2001: 7):

- to provide an appropriate framework for political dialogue, allowing the development of close political relations between the Parties;
- to support the efforts of the former Yugoslav Republic of Macedonia to develop its economic and international cooperation, also through the approximation of its legislation to that of the Community;

- to promote harmonious economic relations and develop gradually a free trade area between the Community and the former Yugoslav Republic of Macedonia;
- to foster regional cooperation in all the fields covered by this Agreement.

Most interestingly, the preambular reference to the status of potential candidates is not echoed in the aims of the association: while the framework to be established shall allow for “close political relations”, it is obviously not meant to serve as a framework for further integration taking the form of agreements. In fact, none of the SAA’s contains any explicit link to intensify contractual relations.

Croatia’s Article 1 is amended regarding the completion of the transition into a market economy (Commission of the European Communities 09.07.2001: 15). This amendment is identically placed in the respective articles for Albania, Montenegro, Serbia and BiH. The agreements for the latter countries also contain two distinct paragraphs preceding the above mentioned text in FYROM’s SAA (Cf. Art. 1 in Council of the European Union 22.05.2006, Council of the European Union 21.09.2007, Council of the European Union 29.04.2008, Council of the European Union 06.06.2008):

- to support the efforts of [identical for Serbia, Montenegro, Albania, BiH – P.L.] to strengthen democracy and the rule of law
- to contribute to political, economic and institutional stability in [Serbia, Montenegro, Albania, BiH – P.L.] as well as to the stabilization of the region.

Albeit the respect for democratic principles is reinforced in the SAA’s main body in Title I, General principles, Article 2, the amendments are more than only textual differences. If conditionality is applied consistently, textual or substantive differences such as the above are a result of varying progress in meeting the Council’s requirements and the Commission’s efforts in monitoring this process.¹⁸

Article 2 also varies in the SAA’s: Croatia and Albania share an “essential-element clause” with the FYROM model at the center of which lies the respect for democratic principles and human rights, the rule of law and the principles of market economy. (cf. Art. 2 in Council of the European Union 26.03.2001).

¹⁸ See chapter 6 and 7 for the Commission’s monitoring and the Council’s rewarding practice.

Substantive differences, however, appear in the Serbian, Montenegrin and BiH's version of the "essential-element clause": all three contain a half sentence stating that the expected respect "... [includes] full cooperation with the ICTY...". This notion is reinforced in a specific article on reaffirming the importance to implement international obligations, notably the full cooperation with the ICTY (cf. Art. 4 in Council of the European Union 21.09.2007, Council of the European Union 29.04.2008, Council of the European Union 06.06.2008).

As a novelty in bilateral contractual relations seeking association, the SAA's contain an explicit link to regional cooperation:

"International and regional peace and stability, the development of good neighborly relations are central to the Stabilisation and Association Process. The conclusion and the implementation of this Agreement come within the framework of the regional approach of the Community as defined in the Council conclusions of 29 April 1997, based on the merits of the individual countries of the region" (Council of the European Union 26.03.2001).

Textual amendments in all other SAA's derive from an update stating recent Council conclusions on conditionality, namely those of 21 June 1999 when FYROM had already signed its agreement. In the same vein, Article 4 is clear in formulating the Union's expectation on how regional cooperation should be operated:

"The former Yugoslav Republic of Macedonia commits itself to enter cooperation and good neighborly relations with the other countries of the region, including an appropriate level of mutual concessions concerning the movement of persons, goods, capital and services as well as the development of projects of common interest. This commitment constitutes a key factor in the development of the relations and cooperation between the Parties and thus contributes to regional stability" (Council of the European Union 26.03.2001: Art.4).

As clear as the reference was made to the Council's conclusions on conditionality, the clearer is Article 4 in stating that regional cooperation as such serves as the key factor when it comes to developing contractual relations further. Albania, Croatia, Montenegro and Serbia received the identical article though amended by national peculiarities: For Albania, this is "trafficking, including in particular in human beings and illicit drugs" (Council of the European Union 22.05.2006: Art. 4). For Croatia, "refugee return" (Commission of the European Communities 09.07.2001: Art. 4) and for the Dayton signatories "border management.. and trafficking, including, in particular, in human beings, small arms and light weapons, as well as illicit drugs" (cf. Art. 6 in Council of the European Union 21.09.2007, Council of the European Union 29.04.2008, Council of the European Union 06.06.2008). The article on regional

cooperation is thus the only article providing country-specific guidance for each signatory on what is expected from the associate. The fact that the latter countries started negotiating as State Union but finished in a twin-track approach might explain the identical wording.

The last country-specific topic being dealt with is weapons of mass destruction (WMDs) and the fight against terrorism. While there is no such specific mentioning in FYROM's SAA, it is made another „essential-element” in Serbia's, Montenegro's and BiH's SAA: The former receives a detailed list of action to be jointly taken, while a single sentence suffices in the latter cases (cf. Art. 3 in Council of the European Union 21.09.2007, Council of the European Union 29.04.2008, Council of the European Union 06.06.2008).

The comparative analysis on the character of the SAA's compared to earlier established associations, notably through Europe or First Generation Agreement showed that the Union departed into a new practice: first of all, the agreements do not provide a clear, unquestionable link to membership. Rather, the notion of “potential candidate” does not confer a legally enforceable right. Alternative readings at best suggest that

“...the EU is simply acknowledging in positive yet diplomatically cautious manner the political and economic reality of the situation in which the SAA associates find themselves” (Phinnemore 2003: 101).

The “manner” Phinnemore refers to is the application of conditionality. Those who expected the SAA's to be identical regarding aims, objectives and general principles miss the fact that consistent application of conditionality is not ignoring on the ground processes of meeting the Council's requirements. The different speed in meeting them is rather the focus in applying the principle. The SAA's therefore, serve as stepping-stone in that it lies in the responsibility of the associates alone to meet the objectives laid down. There are clearly no door-openers in providing a timeline or guideline to yet the next level of contractual relations. If so, the objectives of the association would include a clear notion on their function as a framework of a prospective upgrade of contractual relations. The existence of the country-specific requests in the respective agreements is a strong indicator for on-the-ground differences that were observed during negotiations and before. The above analysis of textual and substantive differences in the agreement thus raised the likelihood of consistent application in that there is substantive differentiation for Dayton signatories and those that were not. The crucial exception to this is Croatia: having signed its SAA as the second in the region, the less strict

substantive differences in the agreement do not correlate with existing contractual relations, as Croatia's negotiations on a Cooperation Agreement were suspended and therefore, did not exist. If applied consistently, the differences identified are a result of divergent progress monitored by the Commission and reinforced by the Council. In fact, if Croatia's balance by the time of receiving the agreement showed fulfillment of the conditions applicable in 2001 then conditionality would have been applied consistently.

As for now, being Dayton signatory only accounts for differentiation in the Serbian, Montenegrin and Bosnian case. Furthermore, there is no substantive differentiation with regard to those that did maintain bilateral contractual relations by the time of the SAA conclusion. What is more, the aims of the associations concluded with all the Western Balkan countries is not envisaged as a framework for furthering integration taking the form of contractual relations.

4.2.3 General Membership Promise without Candidate Status

The golden carrot of membership was put on the table in summer 2000. The European Council of Santa Maria da Feira promised in the conclusions the

“[...] fullest possible integration ... into the political and economic mainstream of Europe through the Stabilisation and Association process [...]. All countries concerned are potential candidates for EU membership” (Santa Maria da Feira European Council #300: Item D, Point 67).

The message is double-sided in that it does reaffirm the ultimate and long-term perspective of the country's future within the European family. A more pragmatic reading finds that a general membership promise without granting official candidate status does not contain a legally enforceable right, it simply is no status known by the treaties. So while reaffirming the Union's new policy framework – the Stabilization and Association process as the successor of the Regional Approach – no doubt the countries themselves determined the speed within which this ultimate objective would be met. Interestingly, the membership aspiring countries of Central and Eastern Europe are dealt with under the enlargement headline, the Western Balkans are not. They are dealt with in the external relations section of the European Councils conclusions. By that time, none of the countries had concluded an SAA and therefore, no reference preamble could serve as a test case of whether or not accession would even be mentioned in the treaty texts. What is worth noticing here is that the mere wording suggests

no change in the status quo but rather a confirmation, that Former Yugoslavia and Albania are indeed to be integrated into the mainstream of Europe. Three facts support the idea that this act is one of consolation: Sticking to conditionality within the SAP, giving a general promise without legally recognizable status and the absence of a time frame that renders the idea of shortcuts most unrealistic.

It was clear that if the Union was to stick to its policy in the Western Balkans it would be crucial that the countries moved ahead in actually building up bilateral contractual relations. The general membership promise was thus frequently repeated: The Zagreb Meeting was the first of its kind reaffirming the new policy framework initiated in 1999 and only months after the Feira European Council proclaimed potential candidate status to the countries of the region. In November 2000, European heads of state or government met for the first time with those from countries covered by the SAP in order to elaborate on a joint agenda. The Final Declaration states that “democracy is about to carry the day throughout the region” and that “the way is now open to all the countries of the region to move closer to the European Union as part of the stabilization and association process (Zagreb European Council: Point 1). In June 2003, two of the countries had mastered to sign their SAA – FYROM and Croatia – while ratification was still underway.

This notion of potential candidacy was confirmed by the Thessaloniki Summit Declaration in June 2003 in reaffirming the objectives of the SAP and the overall European perspective for the countries of the region. Those who had hoped for a timeframe or a clear date as to when consecutive steps towards accession would follow were disappointed: the Summit Declaration does not play up to such expectations. As the potential candidate status is still up in the air, the European leaders once again repeated their original agenda and called on the countries to proceed with reform and transformation so that membership criteria could be met in the future. In a nutshell, “preparation for integration into European structures and ultimate membership into the European Union, through adoption of European standards, is now the big challenge ahead“ (Thessaloniki European Council: Point 2).

A joint statement declared that the countries concerned

“all share the values of democracy, the rule of law, respect for human and minority rights, solidarity and a market economy, fully aware that they constitute the very foundations of the European Union” (Thessaloniki European Council: Point 1).

Knowing that the room for maneuver was limited in that the process of accession had not even started, as thorough this declaration might sound it does not help speeding up the process. This also applies to the European Partnerships (EPs) that are best understood as an interim reward, stimulating the reform process by stating short-term and medium term objectives regardless of the status quo of existing bilateral contractual relations.

The EPs were invented in June 2003, roughly four years after the launching of the SAP and thought of as enrichment of the process: They build on the Union's experiences gained with Accession Partnerships with the countries of Central and Eastern Europe (cf. 2571st General Affairs Council).¹⁹ They set out the countries individual priorities thus bolstering the EU's pre-accession strategy. The agreements title, however, limits their appraisal as the trigger on the Western Balkans way to accession: it is not an accession partnership but a partnership agreement (Blockmans 2007: 278). By the time of the Council's adoption, Croatia and FYROM had already signed SAAs while Albania still had its 1992 Cooperation Agreement. BiH and the then still existing State Union of Serbia-Montenegro did not have any contractual relations. Size and speed of the agreements thus vary with regard to the level of bilateral contractual relations reached prior its conclusions. In comparison, when the countries of Central and Eastern Europe signed the Accession Partnerships, they were all recognized as official candidates in the pursuit of the signature of a Europe Agreement. The conclusion of an EP can thus not be labeled a pre-accession instrument in any way similar to the Accession Partnerships (Blockmans 2007: 279).

In that vein, it is most interestingly that the only country that – while the membership application was submitted on 21 February 2003 – was not awarded an EP arguing that the country was not applicable *because* it was too advanced (cf. 2571st General Affairs Council). European Partnerships are difficult to include in the logic of size and speed as well as credibility for two reasons: firstly, they are legally not agreements in the same sense than SAAs or the early Cooperation Agreements. Given that they were concluded following the same structure regardless of the status quo in bilateral contractual relations, they pave the way for future cooperation in offering short-and medium-term objectives thus repeating and

19 Council Regulation (EC) No. 533/2004 of 22 March 2004 established the Partnership Agreements following the Commissions' proposal in COM (2003) 285 final of 21 May 2003.

reinforcing the Council's conditionality conclusions. Therefore, the second reasons lies in the fact that they are not rewarding compliant behavior but rather help governments to streamline reform efforts in order to reach the *next* step on the way to increased cooperation.

European Partnerships

	Albania	BiH	Croatia	FYROM	Serbia	Montenegro
Existing bilateral agreements prior EP „invention”	Non-preferential Trade, Commercial and Economic Cooperation Agreement, 01.12.1992	None	<i>SAA, ratified and membership application underway, Art.49 TEU</i>	SAA in force	SAA signed	None
Council Approval	30.03.2004	30.03.2004		30.03.2004	30.03.2004; for Serbia-Montenegro 18.02.2008	22.01.2007

Table 4.5: European Partnerships compared

So while the run-up to establishing bilateral contractual relations proved to be daunting, concluding EP's were meant to keep the association aspiring countries well on track without upgrading the general membership promise.

4.2.4 Official Candidacy to Membership

The last but one stepping-stone towards accession is entering the accession process by submitting an application that starts the long-term process of negotiation.

The table maps the Western Balkan countries advancement towards ultimately embarking on the road to becoming full members. Here again, there is considerable variation: all countries except BiH in the meantime applied for membership. Croatia applied roughly two years before its SAA actually went into force thus contradicting the logic of gradual rewards. Montenegro, Albania and Serbia submitted their application after the coming into force of the SAA. While FYROM and Montenegro received the status of official candidates and await the opening of negotiations, Albania has not yet been officially recognized.

Accession Process

	Albania	BiH	Croatia	FYROM	Serbia	Montenegro
Application Art. 49 TEU	28.04.2009 while SAA in force	-	21.02.2003 while SAA not in force	22.03.2004 While SAA in force	22.12.2009 while SAA not in force	15.12.2008 while SAA not in force
COM Avis	09.11.2010 #725	-	20.04.2004 #451 while SAA not in force	09.11.2005 #516	-	09.11.2010 #730
„Official candidacy”	-	-	17.-18.06.2004 #567 while SAA not in force	15.-16.12.2005 #560	-	17.12.2010 #728
Opening of Negotiations	-	-	03.10.2005 while SAA in force #669	-	-	-

Table 4.6: Accession process compared

The granting of the candidate status was accompanied by varying comments on the applicant's capability to fulfill the criteria: For Croatia, the Council approved the fulfillment of the Union's requirements:

“The European Council welcomes the Commission Opinion on Croatia's application for EU membership and the recommendation that accession negotiations should be opened. The European Council considered the application on the basis of the Opinion and noted that Croatia meets the political criteria set by the Copenhagen European Council in 1993 and the Stabilisation and Association Process conditionalities established by the Council in 1997. It decided that Croatia is a candidate country for membership and that the accession process should be launched” (Brussels European Council: 7, Point 33).

The version for FYROM reads differently: while in the above case the Council explicitly approves the country's fulfillment of the various conditions, the notion applied here is weaker in only drawing on progress made:

“In the light of the Commission's analysis, the European Council decides to grant candidate country status to the former Yugoslav Republic of Macedonia, taking into account, in particular, the substantial progress made in completing the legislative framework related to the Ohrid Framework Agreement, as well as its track record in implementing the Stabilisation and Association Agreement (including its trade-related provisions) since 2001” (Brussels European Council: 7, Point 24).

To increase variation even more, the Montenegrin official candidate status did not contain a statement either on progress made or on having fulfilled the entirety of EU requirements:

“The European Council endorsed the Council’s conclusions of 14 December 2010 on enlargement and agreed to give Montenegro the status of candidate country” (Brussels European Council: 3).

Optimists await the granting of official candidacy to Albania any time soon while the consideration on the Avis for Serbia might take longer. BiH, as before, is last in line.

4.3 Gradual logic of Reward? Discussion of Findings

Between 1996 and 2009 the EU operated no less than three different policy approaches in Former Yugoslavia except Slovenia but including Albania: the Regional Approach, the Stabilization and Association Approach and the Instrument of Pre-Accession. Only the first two foresaw the conclusion of specific agreements, namely Cooperation Agreements or SAA’s. The above section introduced the various bilateral agreements on offer during that time and elaborated on whether or not the EU operated the respective agreement under the principle of conditionality.

The empirical picture mapping the outcome is clearly one of differentiation: the countries did not move towards the EU in a group as the name of the first policy framework (Regional Approach) for the region back in 1996 suggested. The fact that every country within the policy framework today maintains contractual relations should not lead to ignore that the region is split into groups: those part of the enlargement process (Croatia, FYROM, Montenegro), the one at the door (Albania) and the remaining two (BiH, Serbia) whose SAAs have not yet entered into force.

There are two findings regarding the application of conditionality: The first supports the idea of consistent application. The Union did indeed draw on the entirety of its toolkit regarding bilateral contractual relations. The design of SAA’s based on Europe Agreements is to be understood as a means for differentiation in attaching a brake: while the Europe Agreements served as an institutional framework for further intensification of contractual relations, the SAA’s did not. Offered in 1999 and the strong temporal variation in concluding them proves the need for differentiation. A backward looking analysis, however, sees the logic of gradual

reward watered down: The granting of a potential candidacy might have fired up expectations that would render the fulfillment of conditions less important.

However, the results of this section pose a serious challenge to the monitoring efforts of the Commission as variation was mapped both over time as well as spatially regarding the agreement's provisions.

4.4 Selecting Cases for further Analysis

Full variation – both spatially and over time – is only observable with regard to the SAAs. First, all countries signed one although at different points in time. Second, the SAA's have been subject of the conditionality principle from their very introduction in 1999. The SAAs signed between the EU and the individual countries will thus be the centre piece of the subsequent analysis. However, the variation in outcome alone does not point towards either consistent or inconsistent application of conditionality, although it is safe to assume that the application differs, potentially over time as well as across countries. However, if conditionality would be applied consistently further analysis would reveal that the conclusion of each agreement is determined by the country's degree of compliance – not actual compliance but compliance measured by the Commission through ongoing conduct of monitoring. The findings so far do not contain any inference on the consistent application of conditionality, as they only shed light on the outcome: the subsequent analysis covers both the setting of requirements and the Commission's monitoring in order to find out if the above pattern can be explained with the on the ground fulfillment of EU requirements.

5 Indicator I: Determinacy of Conditions

The theoretical framework and the research design section proposed to engage in a fact-finding, explorative endeavor to determine whether or not conditionality is applied consistently. The previous section established that two types of agreements fall under the application of the conditionality principle: Cooperation and Association agreements. The comparative analysis revealed that treaty provision varied across countries. That variation alone does not run counter to conditionality being consistently applied. This chapter analyzes indicator I or the determinacy of conditions set by the Council. In order to measure conditionality consistently applied I expect the Council to condition the conclusion of bilateral agreements and to set determinate requirements. These need to be unambiguous and identical to all countries offered identical agreements as rewards.

I will show by temporal and spatial comparison that the countries did not face identical requirements. While the treaty provisions remain the same throughout the observation period, the countries find themselves in a regatta race with the EU watching closely the individual speed in meeting requirements: Rather than being driven from Brussels, the speed of rapprochement in terms of bilateral contractual relations is rather determined on domestic grounds. Contrary to this finding, the expectation regarding consistent application of conditionality is the setting of identical requirement for the countries in question – over time or at least, if there is country-specificity towards individual partner countries, conditions are the same for each type of agreement offered. The chapter proceeds in a temporal logic, showing in how far the set of conditions increased over time or whether a previously presented set of conditions was watered down at some later point in time. The set of conditions identified is the *tertium comparationis* for the subsequent analysis of the Commission's monitoring efforts (indicator II) and the rewarding practice (indicator III and IV).

5.1 Attaching the Strings: Requirements for bilateral Agreements

5.1.1 Post-Dayton

The conclusion of the Dayton and Paris Peace Agreements was laying the cornerstone of what was to become a defined EU policy in the region.²⁰ Despite disintegrative forces still existing, pacification, reconstruction and stabilization were the top priorities (Altmann 1998: 504). With its conclusion, more than four years of violent conflict ended by putting into place a system of territorial delimitation of power along ethno-national lines in the new state Bosnia-Herzegovina, consisting of the two entities Republika Srpska and the Federation of BiH.

Optimists viewed the Dayton as framework that would solve the region's problems and keep the region on track automatically (cf. Biermann 2001: 924). As the respective EU document cites, "the Peace Agreement and the London conference outlined the parameters for restoring peace in former Yugoslavia so that objectives might be attained and peace maintained in the long-term." Mutual recognition, cooperation with the International War Crimes Tribunal and refugee return were defined as set of pre-conditions for peace in the region (Commission of the European Communities 14.02.1996: 1a). The implementation and thus the success of the settlement depended heavily on the international community's willingness to back the agreement (cf. Brenner 1995: 5, see also Calic 1996). There was only little doubt that a long-term presence of both the EU and the international community were prerequisites for any prospect of Bosnia-Herzegovina's democratization process (Calic 1996: 64).

Shortly before the conclusion of the Dayton and Paris Peace Agreements the Council sought to establish guidelines concerning former Yugoslavia. The conclusions of 30 November 1995 state the Union's objective of overall stability in the now independent states of former Yugoslavia. Building stability and prosperity were meant to serve as the cornerstone for the EU's development of a long-term policy in the region (1878th General Affairs Council: 15). The introduction declares that "the European Union has spared no effort to promote peaceful and lasting solutions" and reaffirms its commitment in achieving a lasting solution in the ongoing peace talks. The situation of BiH is shortly discussed in that the solution of territorial as well as questions of how state structures permit the functioning of a multi-ethnic state are

²⁰ For a narrative story of the Dayton negotiations and an appraised Milosevic biography see LeBor 2002: 244.

essential to the development of relations with the Union. The report also states eight explicit and broad objectives the EU seeks to help achieving, ranging from full recognition and respect for human rights and rights of minorities as enshrined in international law to market economies and mutual recognition among all the states of Former Yugoslavia, within their internationally recognized borders. Interestingly, these eight explicitly defined goals are of declaratory character only without accounting for the status quo in the first place:

- The continuing existence of Bosnia-Herzegovina as a single State in its internationally recognized borders, consisting of two entities: the Federation of Bosnia-Herzegovina and the Republica Srpska;
- Bosnia-Herzegovina must be a multiethnic state,
- A democracy founded on respect for the human person and the rule of law;
- Basic human rights and the rights of minorities as enshrined in international law have to be fully recognized and respected;
- Full respect for the rights of refugees and displaced persons, in particular the right of voluntary return;
- A framework for early, free and fair elections in Bosnia-Herzegovina;
- Economies based on market principles and regional cooperation;
- Mutual recognition among all the States of former Yugoslavia, within their internationally recognized borders;
- The establishment of a process to define arms control, disarmament and confidence building measures.

Another set of EU objectives with regard to economic reconstruction in the region is stated in the very same document (1878th General Affairs Council: 20):

- The establishment and reinforcement of democratic political institutions which guarantee the rule of law, human rights and fundamental freedoms;
- The reinforcement of civil society and the strengthening of non-governmental bodies and cultural and educational institutions;
- Support for economic stabilization and transition to market economies;
- The rebuilding and modernization of energy, water, transport and telecommunications networks;
- The development of the private sector, specifically smaller firms and the promotion of investments;
- The establishment of open, free and normal economic relations between the States of former Yugoslavia;

- The participation of the countries concerned in the open international economic system;
- The development of trade and cooperation with the European Union and other international partners.

But: the granting of longer-term measures will be subject to criteria of conditionality which were envisaged to include the following elements (1878th General Affairs Council: 21f):

- Implementation of the terms of the peace agreement;
- Respect for human rights, minority rights, and the right to return of all the refugees and displaced persons;
- With respect to the FRY (Serbia and Montenegro), the granting of a large degree of autonomy within it for Kosovo;
- Respect for the principle of market economy;
- Cooperation with the international war crimes tribunal.

The report thus covers all aspects of EU engagement and beyond, namely humanitarian assistance, return of refugees and displaced persons, the High Representatives role, constitutional issues of Bosnia-Herzegovina, reconstruction and regional development, future agreements as well as arms control.²¹ These points are discussed despite the Council's remark, that there is not yet a long-term policy towards the region (1878th General Affairs Council: 15).

What is of striking interest here is the mentioning of future agreements at a time when none of the newly independent states maintained bilateral contractual relations. Agreements are explicitly mentioned in that "the EU seeks to establish, as soon as conditions permit, a long-term relationship with the countries of the region". The envisaged relationship "should take the form of agreements in the framework of a regional approach" including three explicit objectives (1878th General Affairs Council: 23). Firstly, the improvement and intensification of relations with the EU accounting for the aspirations of the countries concerned; secondly, the fostering of reconciliation and the establishment of open and cooperative relations among

²¹ For a detailed account on the EU's financial contribution to reconstruction in Former Yugoslavia through aid and financial measures see Commission of the European Communities 18.12.1995).

these countries and their closest neighbors; and thirdly, the agreements overall contribution to peace and stability in the region (1878th General Affairs Council: 23).

As concerns type and content of future agreements, the Council's conclusions state:

“These agreements should be based on experience gained from previous agreements with the EU and should have an element of clear political and economic conditionality, including in particular respect for human rights, minority rights, the right to return of displaced persons and refugees, democratic institutions, political and economic reform, readiness to establish open and cooperative relations between these countries, full compliance with the terms of the peace agreement and, with regard to FRY, the granting of a large degree of autonomy within it to Kosovo. The willingness of the concerned States to engage in regional cooperation and to speed the process of economic and political reform will be determining factors in the future relations with the European Union” (1878th General Affairs Council: 24).

It is clear that despite the post-war uniqueness of the political situation in Former Yugoslavia the Council retained to its room of maneuver already in place: Even though it is not explicitly mentioned the experience gained from previous agreements clearly draws on association and cooperation agreements with the countries of Central and Eastern Europe. The inclusion of an element of political and economic conditionality is further enhanced by stating that the determining factors in developing contractual relations is the country's willingness to engage in thorough reform and to engage in regional cooperation. There is thus a different strategy behind contractual relations with the Western Balkans compared to the humanitarian aid sector that was directed to regions most severely suffering from conflict “as long as the need exists” – without conditions (1878th General Affairs Council: 16). The Council's considerations of November 1995 marked the beginning of the EU's strategy towards those countries of the region that are Dayton signatories. What is worth noticing is that the Council's conclusions cover objectives for the Dayton signatory states only, more precisely those for BiH, Croatia and Yugoslavia. Macedonia, though also part of former Yugoslavia, is not mentioned. Neither is Albania that is later included in the regional policy approach.

The EU's strategy as laid out by the Council in 1995 is enforcement of regional cooperation among the countries in an effort to back the peace process in a long-term perspective. The EU's stance on building-up contractual relations in late 1995 are best described as reserved – while declaratory objectives are put up front, conditions for eventual integration are not yet on the table.

In the Commission's Working Group report to the Council of early February 1996, the Commission outlined prospects for the development of a regional cooperation and the Union's role in fostering such cooperation among the countries of the region. The report shortly reiterates the domestic situation of the Dayton signatories and finds that external assistance will be more effective against the backdrop of economic stability and growing trade (Commission of the European Communities 14.02.1996: 2). The report predicates an "all-round cooperation" to reconcile political and economic objectives through a regional approach. In order to encourage a regional approach, the report explicitly states contractual relations as a means:

"The European Union will inevitably be called on to conclude a first generation of agreements with these countries. There is no need at this point to speculate about what they will be like or what they will be called" (Commission of the European Communities 14.02.1996: 2).

While the Council's assessment echoes the status quo identified in earlier reports and repeatedly names the declaratory policy objectives, it does not directly link its wish-list to a concrete offer. Type, speed and content are left for further consideration (cf. Commission of the European Communities 14.02.1996: 2). However, there is a direct link to strings attached to the prospect of contractual relations in that "certain conditions should be written into the agreements..." (Commission of the European Communities 14.02.1996: 3). The signal for the Western Balkans could not be clearer in 1996: leaving open type, speed and content means that the countries would not be offered what was on the menu for those in Central and Eastern Europe thus disappointing those who dreamt about quickly approaching the door to eventual accession. In the absence of a clear cut list of items, the talk of conditions is clearly related to encourage cooperation among the countries of the region and on establishing close cooperation with the Union herself, but at that time only with regard to economic cooperation: The report's focus rests is on measures such as preferential market access, re-establishing trade relations with neighboring countries or the creation of a free trade area (Commission of the European Communities 14.02.1996: 3). There is, however, a clear link to conditionality: the report even discusses the option of conditioning future bilateral agreements relating to freedom of movement subject to a commitment to parallel progress with its neighbors. In other words, a tit-for-tat strategy in which progress would be rewarded reciprocally.

The political dimension is discussed in only few words, mentioning political dialogue as a mean to help solving problems such as the resettlement of refugees that could ultimately lead

to a stability pact serving as a framework for good neighborly relations (Commission of the European Communities 14.02.1996: 3). Refugee return and resettlement is the only policy field that is mentioned in the report. The guidelines contained in the document under item III leave no doubt on the Commissions view that the prerequisite of regional cooperation “should be central” to potential talks and a “clear component” linking the advantages of future agreements to commitments by the countries concerned (Commission of the European Communities 14.02.1996: 5).

The nexus between regional cooperation and the future of contractual relations is clearly motivated by the Peace Talks of Dayton, Paris and Rambouillet that called upon the signatories to ensure not only the end of violent activities but to restore lasting peace that would eventually allow each country to recover from its destruction. In that sense, regional cooperation is a prerequisite to any kind of enhanced cooperation based on the peace agreements.

With peace talks being over for more than a month, the Council reiterated the situation in former Yugoslavia with regard to implementing the Dayton provisions. For the first time, the Council also deals with Albania and the prospect of developing bilateral relations. As concerns the obligations arising out of the peace agreements, the Council assesses the on-the-ground situation in meeting the requirements in BiH and the Federal Republic of Yugoslavia. Regarding the former, deadlines had been missed and a general lack of positive progress is attested (1902nd General Affairs Council: 11). The latter – FRY –had not yet been recognized yet, a matter the Council hoped to be realized in the near future. In all, the Council again repeats the nexus between the signatory's commitment to fulfill the obligations arising out of the peace agreements and regional cooperation, namely in the field of economic cooperation. It called however on the Commission to present a comprehensive report on prospects for increased cooperation “in the context of an overall approach to the region's future” as well as “means in order to assist the countries” (1902nd General Affairs Council: 13).

So far, the Council's main concern was the assessment of progress with regard to implementing the peace agreements. February 1996 saw the birth of the envisaged regional policy framework now sketched out in detail: Firstly, the Council recalled that “compliance with and implementation of the peace agreement by the parties are preconditions for the

development of cooperation” (1903rd General Affairs Council: Item 1). The Council now clearly defined the regional scope of the approach:

“The regional approach should be directed primarily at those countries of the region for which the European Community has not adopted directives for the negotiation of association agreements. Neighbouring countries which so wish should be able to be associated in the cooperation by appropriate means” (1903rd General Affairs Council: 4).

The Council followed a pragmatic approach in that it defined the scope not in terms of domestic conditions but rather from its very own perspective: it grouped together Dayton-signatories and the one that had not been involved, namely FYROM. The notion of neighboring countries wishing to join in clearly refers to Albania located at the very south tip of southeastern Europe, surrounded by Italy and Greece as member states. Having defined the geographical scope of its approach the Council identified cooperation through bilateral contractual relations that

“[...] must be designed as a substantial incentive to political stability and as an instrument for economic development and cooperation between them, between those countries and their neighbours, and with the European Union” (1903rd General Affairs Council).

Furthermore, complying with the requirements set is to serve as the driver for any rapprochement taking the form of bilateral contractual relations:

“It must be clear that conclusion of these agreements will depend on the willingness of the countries concerned to work towards consolidating peace and to respect human rights, the rights of minorities and democratic principles” (1903rd General Affairs Council: Item 4).

In its declaration on former Yugoslavia the Council again mentions the criteria of conditionality for all kinds of assistance or longer term measures, be it reconstruction assistance or future bilateral contractual relations. With regard to economic cooperation, it recalls the Commission’s proposal for reciprocal measures: The application of the agreements will be subject

“...to the readiness of each of the countries concerned to cooperate with its neighbors.” In more detail, “they will have to undertake to adopt reciprocal measures ... and to develop projects of common interest” (1903rd General Affairs Council: item 3).

Interestingly, the neighboring countries wishing to join in the regional approach are not specifically addressed. There is neither a reference on how the Council envisages monitoring compliance on the ground. The Council’s conclusions strive sketching out a general framework of how relations might be shaped and which role the Union is willing to take in

bolstering peace efforts. Having missed the early opportunity to come up with a specific offer the region as such is politically placed behind those countries with Europe Agreement.

5.1.2 Offering Cooperation Agreements: The Regional Approach

Against this background, it is the Commission that outlined common principles for future contractual relations with certain countries in South-Eastern Europe in October 1996. Repeatedly, the Union's policy approach formulates the successful implementation of the peace process as overriding objective (Commission of the European Communities 02.10.1996: 1). Bilateral contractual relations are defined as "an effective tool in bringing about the desired stability the EU seeks to help establish in areas of geographic proximity" Any agreements shall thus "be negotiated at a time and with a content so as to make a maximum contribution to the stability in the region" (Commission of the European Communities 02.10.1996: 4).

The respective agreements shall be more than Cooperation Agreements but less than Europe Agreements. What is needed for this second type of agreement however, "reflect[s] a higher level of economic and political maturity of the countries concerned" (Commission of the European Communities 02.10.1996: 5). The argument behind inventing *sui generis* agreements is thus the domestic status quo. The wording leaves no opportunity to clarify that is in not the Union's willingness to enter into contractual relations but the capacity of the cooperation seeking countries in meeting requirements. The application of conditionality is also laid out:

"The economic maturity of the three countries concerned clearly differs significantly, Croatia in particular is economically more advanced. The economic and trade aspects of the future agreements could be adjusted accordingly without, however, prejudging the level of the respective political relations with the European Union. The first agreements with the three core countries should remain cooperation agreements even if in certain aspects they may go beyond the economic content of traditional first generation agreements and could be, therefore, considered as *sui generis*. If an association with the European Union in the long term will in any case require an advanced economic maturity, such maturity itself does not automatically qualify any of these countries for association or indeed any additional political progress in its relations to the Union. The political dimension is of key importance, and each case will have to be assessed with particular care both in its regional context and against the conditionalities that apply, before the bilateral relations with the European Union can move to a higher level" (Commission of the European Communities 02.10.1996: 5).

The reference to the country's economic performance, especially with regard to those that outperform the usual level of economic maturity do not matter as a plus with regard to the speed of granting an association agreement. In other words: the out performance of conditions set does not automatically result in a speedier process. What is more, the qualification of even the basic cooperation agreements as agreements *sui generis* maintains the level of uncertainty to the countries concerned. The contours of the envisaged differentiation, however, become visible: The Commission drew an explicit distinction with regard to the applicability of common principles. Albania and FYROM as non-signatories were envisaged to receive differentiated treatment (Commission of the European Communities 1996a: 2). The scope for differentiation was to range from institutional mechanisms, timing and – most importantly – the application of political conditionality (Commission of the European Communities 02.10.1996: 3). The “element of clear political and economic conditionality” should thus include nothing less than the respect for human rights, minority rights, the right for refugees and those displaced to return to their homes, democratic institutions, political and economic reform, regional cooperation as well as compliance with the obligations of the peace agreements. In designing the agreements the Union thus sticks to existing arrangements, notably in introducing an essential element clause amended by regional cooperation as yet another essential element. In short: the worse the domestic status quo, the higher or the more demanding the stepping-stones to be eligible for contractual relations. What is more “the exceptional situation in these countries justifies departing from past practices”:

“The Community's capacity to suspend the agreements (and financial cooperation) in case of non-compliance with essential elements should allow immediate action in cases of special urgency” (Commission of the European Communities 02.10.1996: 8).

It is not only domestic affairs but – in the case of FRY also involves international law such as “granting Kosovo large degree of autonomy” (Commission of the European Communities 02.10.1996: 4).

The report's last section considers the Unions approach towards negotiating the agreements outlined above: In an attempt to differentiate for the individual country's performance, negotiations follow the logic of the regatta principle rather than a region-wide grouping: negotiations are to be started based on an informed political assessment, “taking into account the relevant conditionality and the need to maintain the necessary degree of balance of the European Union's bilateral relations with each of the three countries”. These, as well as the

fulfillment of the peace agreement's obligations are "absolute preconditions for negotiations" with any of the three states. These obligations also matter in the negotiation process itself:

„The entire negotiation process will then have to be accompanied by an evaluation of relevant political developments which may have an impact on the progress of negotiations of the content of an agreement." (Commission of the European Communities 02.10.1996: 8).

The Union's line of thought is, however, inconsistent with the reinforcement by reward hypothesis: if it the level of maturity that is decisive in the first place why not offer the entire toolkit of agreements and trust in the Commission's monitoring? Instead, the carrot within reach for the countries is watered down and kept short of accession, despite the finding, that the respective countries would meet obligations at different points in time anyways. The Commission is clear in stating the obvious: the other three countries

"...are in principle eligible for closer relations, although at present it is impossible to forecast when the necessary conditions will be met" (Commission of the European Communities 02.10.1996: 7).

The Regional Approach thus contradicts its title as the menu is not the same. Even though the envisaged impact of establishing bilateral contractual relations has been voiced more than once, the Commission herself is pragmatic in conceding that the combination of general and specific as well as global conditions such as the human rights suspension clause ultimately result in uncertainty with regard to the beginning of negotiations even on the most basic cooperation agreements, not to mention the likelihood of concluding them (cf. (Commission of the European Communities 02.10.1996: 8).

On the supply side, there are two observations: with regard to humanitarian assistance to those countries and regions in need, there are no strings attached. With regard to contributing to peace and stability through bilateral contractual relations, the Commission envisaged the Union to stick to the already defined scope of conditionality without departing into a new practice. On the contrary, wherever possible, it is clear that outperforming certain conditions in one field does not confer any automatic response in that the country could shorten its way to the next level.

On 29 April 1997 the Council adopted – without discussion – conclusions on the application of conditionality with a view to developing a coherent EU strategy for its relations with the countries in the region (2003rd General Affairs Council). These conclusions were presented

earlier on 15 April 1997 by the Working Group on Former Yugoslavia with the intention to develop bilateral relations with the countries of the region making an “effort to consolidate peace and stability in the region” (European Union - The Council 15.04.1997). These draft conclusions that were later adopted translate the pretty broad considerations of how conditionality could be applied vis-à-vis the Balkans.

Firstly, the conclusions define the geographical scope: The concept of conditionality now is to cover all countries in Southeastern Europe without Association Agreement, namely BiH, Croatia, Federal Republic of Yugoslavia, FYROM and Albania. Second, they make clear that conditionality is applied with regard to the domestic status quo: while general conditions apply to all countries seeking intensified relations with the Union, specific conditions are to cover a countries obligation arising under the peace agreements (cf. European Union - The Council 15.04.1997: 2).

Scope and depth of conditions are thereby defined, but how does this relate to the process of intensifying or even building up bilateral contractual relations? The basic proposition here is that “progressive implementation of conditions will lead to progressive improvement of relations subject to a continuous and comprehensive political and economic assessment in which each country will be judged on its own merits” (cf. European Union - The Council 15.04.1997: 2f). The application of conditionality is thus subject to different degrees, bearing in mind that the countries back in 1997 maintained different degrees of contractual relations. The reviewing process is to be conducted on the basis of all information available (cf. European Union - The Council 15.04.1997: 2).

In applying conditionality, the Union differentiates on three different levels: region-wide, all countries encompassed receive general conditions. Second distinction is whether or not the respective country is a Dayton-signatory or not. If so, they are obliged to implement the provisions contained in the peace agreements. Additionally, the EU dictated a country-specific list of specific conditions. The fulfillment of the following general conditions shall permit the beginning of negotiations (cf. 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 to all countries equally. As mentioned above, the Dayton signatories or former war parties further receive country-specific or special conditions. These special requirements clearly are the most effective mean of differentiating among the countries: they are clear in naming an objective but ignore the status quo's distance to the ultimate condition and thus the likelihood of the country's compliance in meeting them.

Croatia

- Compliance with the obligations under the Basic Agreement on Eastern Slavonia and cooperation with UNTAES and OSCE;
- Opening of the customs border between Croatia and the Republika Srpska;
- 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 UPFM. Evidence that the government of Croatia is using its influence in bringing Bosnian Croat war criminals to justice before the International Tribunal.

Bosnia-Herzegovina

- Establishment of functioning institutions as provided for in the constitution, and formulation of a foreign trade and customs policy for Bosnia and Herzegovina;
- Beginning of a credible process towards free movement of persons, goods, and capital within Bosnia and Herzegovina;
- Cooperation with the High Representative including on Brcko;
- Evidence of the implementation of a truly unified City Council in Mostar and of effective functioning of the UPFM, and cooperation in the establishment and functioning of the Federation. Dismantling of all structures which the OHR judges contrary to the spirit and letter of the GFAP. Evidence of cooperation with the International Tribunal, notably in bringing Bosnian war criminals to justice before the Tribunal.

Federal Republic of Yugoslavia

- Credible pressure on the Bosnian Serbs to cooperate in the institution building and the implementation of the provisions of the constitution. Evidence that the government of FRY is using its influence in bringing Bosnian Serb war criminals to justice before the International Tribunal;
- Existence of a real dialogue with the Kosovo Albanians on the status of the Kosovo within the borders of the FRY.

In all cases, specific conditions echo the respective country's obligations complying with international law. Therefore, there is no clear set of specific conditions but significant overlaps with either general conditions or those arising out of the peace agreements.

“During the negotiations, compliance will be monitored continuously and progress on certain aspects will depend on declared readiness to corresponding regional cooperation. In addition to the compliance with the above mentioned conditions, the conclusion of cooperation agreements requires, where applicable, substantial progress in the achievement of the objectives of these conditions as well as substantial results in the field of political and economic reforms and a credible commitment of the government concerned to continue on this path, proven readiness to cooperate and entertain open, good neighbourly relations with the countries in the region will be required“ (European Union - The Council 15.04.1997: 6).

Despite the clear declaratory notion in formulating long-term objectives on domestic grounds, what is of general concern is the measurability of the conditions. The first problems stem from the fact that conditions tend to overlap between the various sets. Second, the application of conditionality considers the conclusion of an association an evolutionary process where the level of compliance is to increase throughout the negotiation. This notion renders the challenge of benchmarks valid for all a dramatic one. On the ground judgment of evolutionary fulfillment of conditions simply works without benchmarks. In an attempt to transfer the vast list of exceptionally broad conditions to elements at least easier 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

Lastly, the conclusions define how the different sets of conditions and the verifiable elements translate to the process of bilateral contractual relations: it is clarified, that

“...the application of conditionality 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 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).

There are a few basic considerations to the Council's conclusions on the application of conditionality that might matter in monitoring compliance and rewarding compliant behavior: It is used as a means to differentiate between the different domestic status quo, with regard to the region's past and not so much on the future. The EU's policy approach leaves no doubt that the countries are bound to obeying international provisions arising out of the peace agreements with the EU conditions being yet another set of conditions at work.

Above all is regional cooperation as an imperative whose scope and “condition-ness” is not clearly defined with regard to the distinct set of general and specific conditions. The run-up to concluding bilateral agreements is defined as evolutionary with progressive compliance leading to progressive improvement of relations. That corroborates the claim that compliance leads to rewards, while non-compliance does not. Compliance with the conditions set is thus the only game in town, instead of providing any fast-track or exist route.

In all, the demand side of the application of conditionality is laid out in detail with strong emphasis that in cases of serious non-compliance, the application of any agreements could be suspended. What is not as clear however is the countries potential benefit of complying with the conditions, or, in other words, the definition of what the carrot is to look like. So while the EU defines the strings attached in great detail, it fails naming the carrot.

5.1.3 Enhancing Cooperation to Association: Stabilization and Association Process

In its founding document of the Regional Approach's successor policy – the Stabilisation and Association Process (SAP) – the Commission herself states that the specific features of the countries in the region called for a new policy with new instruments for the entire region of the Western Balkans (Commission of the European Communities 26.05.1999: 4). Next to allocating a massive financial envelope with a total of 5.13 billion Euros for the time period 1999 to 2006, what was new was the offer of Stabilisation and Association Agreements (SAAs), adopted by the Council in June 1999. “The concept of sui-generis categories of contractual relations” was meant to meet changing circumstances in the EU's neighborhood – be it the political landscape after the fall of the iron curtain in Central and Eastern Europe or the dissolution of Yugoslavia (cf. Commission of the European Communities 26.05.1999: 3). Whereas the Europe Agreements contained an explicit reference to the perspective of enlargement, this notion was not applied in a region where a lack of compliance with conditions arising out of the peace agreements and the Council's conclusions of April 1997 had originally led to the re-formulation of a more comprehensive policy:

“In view of the need to define a new approach to the changed general circumstances, and to overcome the failure of the countries to adequately respond to the incentives already offered (notably as regards the need to cooperate on a bilateral, multilateral or regional level), the Commission proposes a new, enhanced approach. This would entail the development of a Stabilisation and Association *process*, which would, in effect, offer higher incentives than before to the countries concerned. These stronger incentives would, of course, require compliance with more demanding conditions, both political and economic as well as increased emphasis on the need for regional cooperation” (Commission of the European Communities 26.05.1999: 3 – emphasis in original).

The novelty is trusting in an enriched set of incentives to overcome a general lack of compliance with conditions set. Only two countries managed to conclude bilateral contractual relations while none of the Dayton signatories were among these. The cure to the problem is

sought in enriching the reward: In offering tailor-made agreements, the wording moved up but without opening the stage for accession.

While the EU's initial Regional Approach was to serve as a framework for establishing bilateral contractual relations alongside assistance and political dialogue, these conclusions further enriched the existing strategy. With a view to formulating a comprehensive policy, the Council declared that the new comprehensive policy would be based on the existing regional approach. The link to the continuing application of conditionality is made clear:

“However, the objectives of this process can only be achieved if the people and governments of the region take active responsibility and make determined efforts. Ultimately, the future of the region lies in the hands of its peoples and governments“ (2192nd General Affairs Council: 7).

In gradually introducing a more advanced relationship that takes into account reciprocal, contractual obligations next to effective contribution to regional cooperation, the Union advanced its reward compared to the Regional Approach. It offers however far less than what had been on the menu for the countries of Central and Eastern Europe. The Council also makes clear that there is no automatism in shaping relations:

“The success of the stabilisation process will depend on the efforts made by each country to make full use of the support offered...” (2192nd General Affairs Council: 8).

With regard to the principle of conditionality laid out on 29 April 1997, the Council confirms that it will apply to all instruments under the SAP umbrella, including bilateral contractual relations. The Council notes that,

“It is important that the objective criteria of the Regional Approach are applied in a way which provides the necessary incentives for each country to make progress in the Stabilisation and Association process” (2192nd General Affairs Council: 8).

As was provided under the Regional Approach, the country's performance is subject to regular monitoring of compliance with the conditions set out. In the initial Council decision on the application of conditionality it was pointed out that the beginning of negotiations required less compliance than the conclusion, rendering compliance a gradual process. With founding the SAP however, this notion is discussed within the enlargement context:

“Obviously, to conclude such an enhanced relationship with the EU, a country would also have to have attained the high level of political and economic development required to meet the increased reciprocal and mutual obligations of the relevant acquis. In addition, taking into account the context of the Stabilisation and Association process, the Stability Pact and the future EU Common Strategy, there would be increased emphasis on progress in developing *regional* cooperation” (Commission of the European Communities 26.05.1999: 4).

Without being explicit, the wording of high level political and economic development and the mentioning of the *Acquis* zooms up the existing set of requirements into the direction of the Copenhagen or accession criteria. Apart from the new financial envelop the political significance of the new policy lies in the fact that the conclusion of an SAA is only one step short of entering the accession process. In concluding an SAA, the contracting country confirms its readiness and capacity to take on the manifold obligations arising out of the *Acquis*.

The Regional Approach offered so called first type contractual relations taking the form of Cooperation Agreements to a group of countries that back in 1996 did not maintain any contractual relations, except for Albania. Three years later, in early summer 1999, the initial policy framework is developed further into a comprehensive policy approach whose cornerstone is the offer of enhanced bilateral contractual relations beyond the initial Cooperation Agreements but below the threshold to the enlargement context: in offering sui generis types of bilateral agreements, the Council enhances the existing incentives in order to overcome a general lack of compliance (cf. Commission of the European Communities 26.05.1999). At the same time, the required level of compliance in order to profit from enhanced relations is lifted up: as the SAAs are more comprehensive with regard to introducing new legislation deriving from the *acquis*, a higher level of compliance is deemed necessary to be considered for improving relations in the first place.

The Council thus enriched the existing regional policy approach while simultaneously keeping down aspirations for a short-cut to accession: “The SAP could be called, for the lack of a better term, a *pre-pre-accession framework* featuring a range of measures aimed at EU-compatibility” (Bechev and Andreev 2005: 10).

5.1.4 Offering the golden Carrot: the (potential) Membership Perspective

A general membership promise without candidate status was made in May 1999 (cf. Santa Maria da Feira European Council). Despite the fact that this ultimate objective was most distant in 1999, the very mentioning of eventual accession lifted up the existing set of requirements. The Copenhagen or accession criteria concluded in 1993 addressed those countries maintaining associations, notably the CEECs.

“Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union“ (Copenhagen European Council: 13).

It was for the first time that the Union formulated clear, distinctive features that any membership aspiring country should not only bear in mind, but fulfill. The items discussed – stable and democratic institutions, rule of law, human rights, minority protection and market economy are exactly the same that were later included in general conditions applying to the Western Balkans. Whereas the latter were required only to organize legal provisions accordingly, the accession criteria speak of a guaranteeing the respective features:

“The European Council will continue to follow closely progress in each associated country towards fulfilling the conditions of accession to the Union and draw the appropriate conclusions” (Copenhagen European Council: 13).

Implicitly, the Copenhagen European Council repeats the notion that only those associated are considered for eventual membership. Albania, having signed a non-preferential trade and cooperation agreement is not considered in this vein. The granting of a status as potential candidates was thus meant as an additional stimulus but left no doubt that concluding an SAA would serve as decisive stepping-stone.

The Zagreb Final Declaration also discussed the application of conditionality and the region's prospect of eventually becoming members of the Union, making clear that “democracy and regional reconciliation and cooperation on the one hand, and the rapprochement of each of these countries with the European Union on the other, form a whole” (Zagreb European Council: Point 2):

“The prospect of accession is offered on the basis of the provisions of the Treaty on European Union, respect for the criteria defined at the Copenhagen European Council in June 1993 and the progress made in implementing the stabilization and association agreements, in particular on regional cooperation” (Zagreb European Council: Point 4).

This quote underlines the sequential as well as gradual logic of bilateral contractual relations with the Union: the successful implementation of the SAA provisions mark a countries readiness and capacity to introduce EU legal provisions, rendering the conclusions and implementation of the SAAs a stepping stone for increased cooperation. In this context, the

Zagreb declaration yet again confirms that the countries individual performance is to be inspiring an “individualized approach to each of these countries” rather than grouping the countries together (Zagreb European Council: Point 4).

A second meeting between heads of states or governments with those from the Western Balkans was held in June 2003 in Thessaloniki. In preparation, the Council had adopted the “Thessaloniki Agenda for the Western Balkans – Moving towards European integration”: it recalled the country’s future within the EU and the principle of conditionality in making clear the importance of compliance with the conditions set (cf. 2518th General Affairs and External Relations Council). The Agenda leaves no doubt that future integration of the countries concerned ultimately is about welcoming them as full members. As clear as this statement is the Council's stance on compliance with conditions as a prerequisite for further integration:

“The EU stresses that the pace of further movement of the Western Balkan countries towards the EU lies in their own hands and will depend on each country’s performance in implementing reforms, thus respecting the criteria set by the Copenhagen European Council of 1993 and the SAP conditionality. In this context, the EU also recalls the content of the Zagreb Summit Final Declaration of November 2000. The principles of „own merits“ and „catch up“ will be applied, in parallel with the regional approach, which remains an essential element of EU policy towards the region” (2518th General Affairs and External Relations Council: 12).

The setting of conditions and the application of conditionality as the decisive factor in concluding bilateral contractual relations of whatever kind proved ignorant to the status quo: the fact that only one country concluded a Cooperation Agreement offered under the Regional Approach had shown that expectations would not be met. So instead of lowering the threshold, the Council introduced the entirety of conditions even to those countries that did not maintain any contractual relations at all. What is more, the earlier distinction between Dayton and non-Dayton signatories that was meant to differentiate for varying domestic conditions is left behind when the prospect of accession entered EU parlance. While former war adversaries earlier received specific attention equipped with specific conditions, they silently slip into the group of membership aspiring countries.

5.2 Discussion: Variation on Indicator I

In order to qualify as consistent application, I expected the Council to set conditions for increased cooperation taking the form of bilateral agreements. Further, conditions need to be

identical to all countries of the region, at least for the respective type of agreement (spatial) and at the same time (temporal). In order to qualify as unambiguous and determinate, the Council is to set clear benchmarks thereby differentiating for the domestic status quo. It is important to note that consistency is not to be confounded with conformity: Variation might be present because of differentiation among the countries.

The analysis detected various bilateral agreements offered to the countries of the Western Balkans operated under the conditionality principle. However, conditions are not identical: In setting requirements for increased cooperation, the Council distinguished between general conditions applying to all countries of the region. In addition to general ones, the Dayton signatories further received specific conditions. There is thus variation between Dayton and non-Dayton signatories. The determinacy of conditions also varies over time. Regarding both number and scope of the various requirements, it is fair to state that conditionality vis-à-vis the Western Balkans is of a “multi-dimensional nature” (Anastasakis and Bechev 2003: 8). Conditionality in bilateral contractual relations towards the Western Balkans comprises:

1. Conditions arising out of the peace agreements and political deals (Res. 1244 UN SC, Dayton Framework Agreement for Peace, Ohrid Agreement, Belgrade Agreement).
2. The 1997 Regional Approach conditions as well as the 1999 SAP's general conditions.
3. Country-specific conditions such as reconciliation or resolving status questions with neighboring countries to be met before cooperation can be institutionalized.
4. The Copenhagen or accession criteria applied to all potential and official candidate countries.

With regard to the dimension of EU impact, it seems impossible to disentangle the various sets of external incentives that are at work simultaneously. It follows from the analysis of indicator I that the advancement of institutionalized cooperation taking the form of bilateral agreements is indeed made conditional. Chapter four on the outcome suggested that over time, carrots grew more attractive. It is, however, problematic to make a sharp cut as to when the subsequent set of requirements renders its predecessor irrelevant. What is more, there are indeterminate overlaps: the Dayton Framework Agreement in set one, for instance, calls for reconciliation and the formalization of peaceful and good neighborly relations, a condition that is also present in set three, though not for all countries of the region. In short, there is

neither a clear set of conditions at one point in time, nor for each type of agreement, requirements are disproportional regarding the status quo of the countries concerned.

Next to overlapping conditions, the second challenge to consistent application of conditionality is the broad nature of conditions such as “rule of law”. While some of the conditions are clearly legalized and thus determinate, others are not. Whereas the separation of power may either be provided for in the constitution or not, the special condition of good neighborly relations is far more difficult to observe. The Council’s verifiable items alone do not provide a clear measure, not to mention missing benchmarks that render monitoring a political judgment. Adding to these challenges is the question of partial fulfillment: How relate the sets of conditions to each other? Are some conditions more salient than others? The introduction of specific conditions is a novelty in conditionality applied vis-à-vis third states. The gradual approach promised in the Council’s decisions is not echoed with regard to measurable degrees of progress, especially when more than one set of requirements exists. The observation of ongoing extensions of existing sets suggests that requirements vary over time and across countries instead of being set once for all times or at least for the same type of agreement.

The point to be made here is that conditions are not designed equally for all countries that maintain relations with the EU as non-members. On the contrary, the principle reveals distinctive features that may not be found in other regions: the first and most obvious one is that the EU operates with two sets of conditions in its regional approach: general and specific conditions. Secondly, the approach is a graduated one, where the beginning of negotiations for an agreement demand less compliance with conditions set than the actual conclusion. Thirdly, compared to the countries of Central and Eastern Europe, the set of conditions for the Western Balkans is generally exceptionally broad when it comes to political and economic conditions (cf. Pippan 2004: 226).

By introducing formal criteria for accession in the 1990s, the EU developed the most complex and extensive set of conditions it has ever used towards third countries. The Council’s conditions address countries in transition and they are specific enough with regard to special conditions that should rather be named primary conditions as they represent conditions *sine qua non* with regard to establishing close ties with Brussels. But: in order to play up to these

expectations, a country has to reach a level of political and democratic maturity, a fact that is absent for BiH or Serbia throughout most of the observation period. EU conditionality, therefore, goes far beyond ensuring that the Union's institutional rules and norms are established. For this purpose, it would have been sufficient to ensure the transposition of the *Acquis*. Instead, EU conditions have been at least partially designed to address transformation problems and weaknesses of the candidates.

In line with the reinforcement by reward hypothesis and Schimmelfennig's argument of increasing size, speed and credibility of the incentive set, this section showed that incentives were indeed upgraded during the observation period. This upgrade, however, was conducted regardless of whether or not the next available threshold was in sight. Countries that would not conclude Cooperation Agreements between 1996 and 1999 would certainly not meet more demanding conditions than those of the SAP. Consistent application demands a crisp set of conditions to be set by the Council for each distinct step of rewarding, notably the conclusion of bilateral contractual relations between the EU and the respective country. Instead, the set of conditions is rather fuzzy than crisp and as of 2004 silently reflects the Copenhagen criteria in pure form, even though BiH, Serbia or Montenegro did not even maintain any contractual relations at this point in time.

Incentives set by setting conditions is thus inconsistent with the reinforcement by reward hypothesis, as conditions vary, both over time and across countries as well as for each type of agreement. In the absence of clearly defined benchmarks, the notion of gradual rewarding further contradicts consistent application of conditionality.

If the outcome in bilateral contractual relations shows a variation as well as the setting of conditions vis-à-vis the Western Balkans, the test for consistent application now rests with the Commission's monitoring of compliance and the respective recommendations to the Council to proceed with establishing or upgrading relations. Even if there are no public benchmarks the analysis of the Commission's efforts should reveal that levels of compliance reached by those that were front runners in concluding agreements later served as such vis-à-vis neighboring countries.

6 Indicator II and III: Monitoring Compliance and recommending Rewards

The previous section analyzed indicator I or the evolution of the Council's set of requirements for the advancement of bilateral contractual relations with each of the countries of the Western Balkans. This section puts indicator II and III to its empirical test: the Commission's monitoring of fulfillment of requirements (indicator II) and the resulting recommendation of future contractual relations (indicator III). The time span of the analysis covers the period from 1996 to 2010 and stops at the time prior the conclusion of an SAA for each country individually.

As the Council's conditions distinguish between Dayton and non-Dayton signatories, Indicator II or the Commission's monitoring is to cover not only general, but also specific conditions presented to each of the countries individually. In order to be applied consistently, I expect coverage of all items on the list of verifiable elements. I also expect extensive coverage of special conditions where applicable. As the analysis proceeds in an over-time comparison, I also expect the Commission's assessment to report on improving fulfillment of requirements.

The Commission's monitoring method and technique is sketched out before engaging in a country-per-country analysis on the country's domestic performance in meeting EU requirements. The individual country's performance is then assessed using document analysis that codes progress over time.

The Commission undertook annual efforts to review the country's compliance with general and specific conditions laid out for the region and each individual country. These efforts – issued in publicly available reports – vary with regard to structure and content.

The formal structure of the early conditionality reports between 1997 and 2000 show a uniform structure: all countries are individually treated in sub-chapters of the annual reports with the Dayton signatories coming first and Albania and FYROM being dealt with in a different section. Those early reports monitor the same sets of conditions, namely democratic principles, human rights and the rule of law, respect for and protection of minority rights, market economy reform, regional cooperation and compliance with the obligations under the Dayton and Erdut peace agreements, as laid down in GAC Council Decision of 29 April 1997

(2003rd General Affairs Council). The latter point – obligations arising from the peace agreements – are only subject to monitoring for the three countries in question. The report monitors each dimension separately, describing recent developments or events and stating progress if existent in the individual field.

The Commission's operational conclusions, issued in the first two years only, present a general assessment building on the aforementioned reports. The basic structure of these reports is the general assessment, singling out areas that need the most attention in the EU's perspective before presenting operational conclusions as to where the Commission envisages the advancement of bilateral relations within an annual timeframe. This is where the Commission's mandate ends. It is the Council that adopts the operational conclusions and presents the individual countries rewarding scheme based on the Commission's assessment.²²

The first exception in this row is the document containing the operational conclusions for the fourth conditionality report of 1999. The general assessment leads to the presentation of a new policy framework that is not to replace the existing regional approach, but rather to develop it further to better address the region's identified needs. The country-specific operational conclusions thus present the roadmap within the new Stabilization and Association Process and state where the first steps towards the conclusion of advanced bilateral contractual relations seem likely to be taken any time soon or highlights areas that need further improvement prior to these.

Between 2002 and 2004, the monitoring structure for the first, second and third SAP report changed, as the annual report identifies "progress made and lessons learned", "continued challenge" and "the road ahead": the structure thus supports the EU's idea of a region-wide policy approach that defines the regional problems in terms of "complexity of the jigsaw" thus moving the wording away from the regatta principle that it followed in its previous reports. The individual country's assessment is only presented in summaries of individual country reports on Commission Working documents that list the remaining problems (cf. Commission of the European Communities 04.04.2002). The annual Commission reports as of 2002 do not have a consistent structure anymore. They show rather distinct outlines, the degree to which single aspects are dealt with varies across the reports. Comprehensive country-specific reports form the basis of these Commission reports: Individual Commission Staff Working Paper discuss the political and economic situation on the grounds (point 2 and

²² The Council's reaction to the Commission's monitoring efforts are covered in the analysis of indicator IV in chapter 7.

3), they also identify “priority areas needing attention the next twelve months”. Any judgement on progress is to be found in the section “Implementation of the Stabilisation and Association Process” that generally and sector-specific identifies progress. As of 2002, the annual reports thus present a shift in the Commission’s monitoring strategy: firstly, the reports contain a much more comprehensive reviewing of domestic states of affair. Secondly, the judgement of progress no longer sticks to the list of verifiable elements presented in 1996 but rather focuses on issue areas relevant for the conclusion of an SAA. Thirdly, each sub-chapter identifies areas or names objectives for the country's reform path over the next twelve months upon the publication of the report. In the Commission’s own words,

“...progress has been measured on the basis of decisions *actually* taken, legislation *actually* adopted and the degree of implementation. As a rule, legislation or measures which are in various stages of either preparation or Parliamentary approval have not been taken into account. This approach ensures equal treatment for all countries and permits an objective assessment of each country in terms of their concrete progress implementing the Stabilisation and Association process” (European Commission 09.11.2005: 4).

Between 2005 and 2008 the monitoring practice is modified again. All individual country reports are now summarized in biannual Enlargement Strategy papers building on the individual country reports. Here again, the document's structure differs from the ones described above: in 2005, following a section containing the state of relations with the EU, the documents present the Commission's judgement of the implementation of the SAP for all countries, not only for the countries that had already signed an SAA in 2005 (Croatia, FYROM) but also for those negotiating (Albania) and those that did not even start negotiating (BiH, Serbia and Montenegro). The section is divided into an assessment of the political situation, the economic situation and European Standards, leading to an overall assessment of the European Partnership in the document’s end.

It is important to note that regardless of the Commission’s structure and content of reports, what matters for the subsequent analysis is whether or not items within the set of general and specific conditions are found to be fulfilled or not. As it has been laid out in the conceptual framework in chapter three, the reports’ wording is coded as “condition fulfilled”, “condition not fulfilled” or “condition partly fulfilled”. The subsequent country-per-country analysis maps the Commission’s assessment in an over-time perspective.

6.1 Albania

6.1.1 Regional Approach

The Albanian case presents an outlier compared to the other countries grouped together as Western Balkans: the country did not belong to Former Yugoslavia, neither was it part of the Balkan wars. To repeat, Albania was included in both Regional Approach and Stabilization and Association Process as it was the only country in 1996 that signed a Cooperation Agreement as early as 1992 but did not have a negotiation directive for an Association Agreement as Slovenia had. Potential reasons for the generally low level of capacities the Commission would be commenting on over the course of the following years were therefore rooted within the country itself, rather than resulting from the new order of the political landscape.

Albania, as a non-Dayton signatory, is to comply with the set of general conditions as presented by the Council in spring 1996. Since October 1995, Albania is a member to the Council of Europe and with its help and support adopted a number of basic constitutional texts. In autumn 1996, the Commission praises Albania's positive record in human rights and finds the country engaged in "an active policy on democracy building and economic reform" (Commission of the European Communities 02.10.1996: 2). However, the statement has to be understood against the background of generally low capacities: the report of 1997 is clear in contrasting this development with the considerable divergence between constitutional and legal provisions, on the one hand, the on-the-ground situation on the other: practically, there is a concentration of power in the hands of the Albanian President Sali Berisha indicative of a general lack of a well established democratic culture (European Commission Directorate General IA 03.10.1997: 6).²³ Between 1997 and 2000, the picture stays more or less the same: the Commission's monitoring does include the list of verifiable elements in the case of Albania. Within democratic principles as well as rule of law and human rights, conditions are generally not fulfilled. In its operational conclusions of 1998, the Commission tackles the problem of low capacities preventing considerations of intensifying the existing level of contractual relations in demanding the provision of basic conditions "in terms of public order and security" (Commission of the European Communities 28.10.1998: 6).

²³ Even though the quoted report has been issued in English, the country section for Albania is in French. Quotes are therefore presented in the original language, indirect ones are translated to English.

The lack thereof also impacts on the Albanian economy being seriously hit by the collapse of the pyramidal pension system in 1996. The banking sector as well as the creation of a competitive regulatory framework suffers from either “incapacity or no will” to actually improve the status quo in this area (European Commission Directorate General IA 03.10.1997: 7). A year later, the Commission, likewise, concludes that,

“Albania remains marked by a lack of public order in large parts of the country and widespread crime and arms trafficking while judiciary and police operates generally under poor conditions“ (European Commission Directorate General IA 19.10.1998: 25).

The document analysis for mid-1999 reveals a slightly worsened assessment with the number of non-fulfilled items having increased from nine to ten and the one of the fulfilled items having dropped from five to only three. The Commission repeats previously voiced concerns on the countries democratic maturity:

“Albania still seems still far from political normalization and the focus on extra-parliamentary discussions, regardless its positive influence on the overall political climate, does not strengthen the existing institutions” (European Commission Directorate General IA 17.05.1999: 24).

Despite these findings that inevitably run counter to assessing progress in the Commission’s very own assessment, the conclusions of the same year envisage to report on the feasibility of opening negotiations for an SAA with Albania (Commission of the European Communities 26.05.1999: 9). The time span from 1996 to 1999 inclusively reveals a constantly bad performance in meeting the EU requirements. Whereas minority protection or freedom of expression is, by and large, found to be fulfilled, Albania performs poorest with regard to complying with protecting human rights and the rule of law, where basic laws most commonly are not found to be implemented properly. Market economy reform shows a mixed balance with progress in some areas and repeated setbacks in meeting the conditions. The country's record in cooperating with neighboring countries is generally found to be progressing. What hinders the development of open and friendly relations in 1999 is Albania’s position during the Kosovo crisis, with cases of arms trafficking reported by the Commission. On the other hand, the country managed to comfort basic needs of about 360.000 refugees fleeing Kosovo.

6.1.2 Stabilization and Association Process

If the Commission's overall judgment of Albania's democratic performance throughout 2002, 2003 and 2004 is to be summarized in one statement, it is that "Albania remains a young and rather unstable democracy" (cf. Commission of the European Communities xxx: 2). The years 1999 to 2005 however, witness a relative improvement in Albania's attempt to meet the EU conditions for bilateral contractual relations. Domestic politics, however, continue to be marked by a culture of confrontation, even though the return to parliament of the democratic party constitutes a positive element to the requirement of separation of powers (European Commission Directorate General External Relations 09.02.2000: 25).

Albania's performance in meeting EU requirements is described as a process of "coming closer to a full respect" of human rights and the especially the rule of law without having reached a satisfactory level yet (European Commission Directorate General External Relations 09.02.2000: 24). Despite acknowledged efforts to macro-economic stability, the Commission is clear in stating that full compliance has not yet been achieved:

"... the inefficiency of public administrations and of the judiciary systems, as well as the lack of security, are at the root of widespread fraud and corruption and are favoring the illegal activities to the detriment of the development of sound economic activities. Reform and qualitative reinforcement of the public administration remain a priority on the path to recovery of the Albanian economy" (European Commission Directorate General External Relations 09.02.2000: 27).

In its conclusions, the Commission invites the Albanian government to make further progress in all areas named, "with a view to a possible future opening of negotiations for a SAA" (Commission of the European Communities 02.03.2000: 6). The call for progress in the most basic areas is repeated in the consecutive report, issued in April 2002, in which the Commission calls for the country's preparedness "to guarantee a stable political environment, with fully functioning democratic institutions" (Commission of the European Communities 04.04.2002: 16). The report identifies two general observations relating to this call: firstly, steady progress in the country has to be judged against the "very low starting point" from where reform efforts departed (Commission of the European Communities 04.04.2002: 20). Secondly, the socio-economic crisis following the financial collapse of 1997 resulted in civil unrest and undermined early efforts geared at reforming institutions. These two developments are reviewed against the domestic scene in Albania:

“The lack of a democratic culture, the absence of dialogue between different political tendencies and a limited understanding of the concept of national interest amongst political leaders have often prevented the development and implementation of sound policies to address the many issues that Albania faces.” (Commission of the European Communities 04.04.2002: 4).

It is the first statement that clearly addresses the issue of the low starting point of Albania thus reflecting the countries past and the persisting problems resulting from the Communist regime. One reason might be to keep down domestic hopes for any optimistic assessment given that the Commission, for the first time, identified some progress with regard to meeting democratic principles. However, there is no single item among democratic principles or human rights protection that was found to be fulfilled.

In 2003, the number of items monitored drops to the lowest number throughout the observation period. Fulfillment of requirements relates – as in previous years – to the freedom of expression and the right to assembly and demonstration, minority rights and regional cooperation. A representative government has been put in place but has to be seen against the background of a “relative, although still fragile political stability” (Commission of the European Communities 26.03.2003: 1). This improved climate is, however, not found to have contributed to major reform steps. The attribute of only “relative” stability did not prevent the Commission from recommending the opening of negotiations for an SAA, although it admits that negotiations “risk being long and drawn” (Commission of the European Communities 26.03.2003: 26).

The Commission’s assessment changes to the worse throughout the subsequent observation period whose report is published in March 2004. Again, the reform process is found to be limited. The overall political climate continues to be overshadowed: there are ongoing tensions within the ruling party against the background of an increasingly obstructive opposition: once more the Commission’s judgment on the functioning of democratic institutions is found to be an obstacle to sound reform implementation. Whereas the previous report had at least found a relative stability in 2002, tensions between the main political parties have delayed the reform program (Commission of the European Communities xxx: 1). Against the declaration of the Albanian government that declared meeting the EU requirements a top priority, the Commission finds that on the ground actions “do not always support this idea” (Commission of the European Communities 30.03.2004: 34).

6.1.3 Pre-Accession

The 2005 report's analysis reveals a more positive overall record for Albania's performance in meeting EU requirements: as in the previous year, it explicitly comments on 15 out of 21 items and for the first time finds no item that is not fulfilled. Moreover, the Commission assessment made a major step forward in finding fulfillment of EU requirements in now eleven fields, with progress made in meeting almost the entirety of items in reforming the market economy and human rights. In the latter field, the report finds that Albanian laws generally respect the rule of law and the adoption of international agreements gives evidence that the overall situation suggests a general recognition of basic rights. However, once again, the Commission worries about the considerable gap between legal provisions and the adversely effects on their effective enforcement given the weaknesses of the judicial system and public administration, organized crime and corruption (Commission of the European Communities 09.11.2005: 7). Besides, there are several Albanian issues still awaiting a sustainable solution: "excessive use of force by the police, the failure to execute final court decisions and in relation to prisons, pre-detentional facilities, and interference by political and financial lobbies in the media" (Commission of the European Communities 09.11.2005: 17). The judicial infrastructure is found to remain "deficient" (Commission of the European Communities 09.11.2005: 15). Although stability improved "governance still needs to improve significantly" (Commission of the European Communities 09.11.2005: 8). The Commission's recommendation is, nevertheless, geared at concluding the SAA with Albania in the very same year.

6.1.4 Discussion: Indicator II and III for Albania

The preceding chapter on the Council's conclusions on the application of the conditionality principle elaborated why and how Albania was grouped together with the successor states of Yugoslavia, given that the country would otherwise be left over surrounded by member states and former Yugoslavia alike. The reports for Albania follow an outline identical to those analyzed for the neighboring countries although the text identifies country-specific challenges towards meeting EU requirements. The collapse of the pyramidal pension fund system that led to a national crisis or the progressively opening attitude towards establishing friendly relations with neighboring countries is judged against the same standard as in other

countries, though these observations are independent of so called Balkan specificities: they are neither a result of the war nor of newly created ethnic patterns but are solely nested within domestic Albanian structures.

The table below presents the Commissions' over time assessment of Albania's performance in meeting EU requirements. It finds that at least 13 and a maximum of 19 items were explicitly mentioned in the Commission's reports. Areas of non-compliance decrease over time, numbers of items with whom Albania complies increase over time. While the analysis of the reports is provided for a rigorous empirical test allowing a comparison over time, the findings have to be seen against the background of countless statements that despite progress made, overall efficiency needed strengthening, stability remained relative and reforms outstanding.

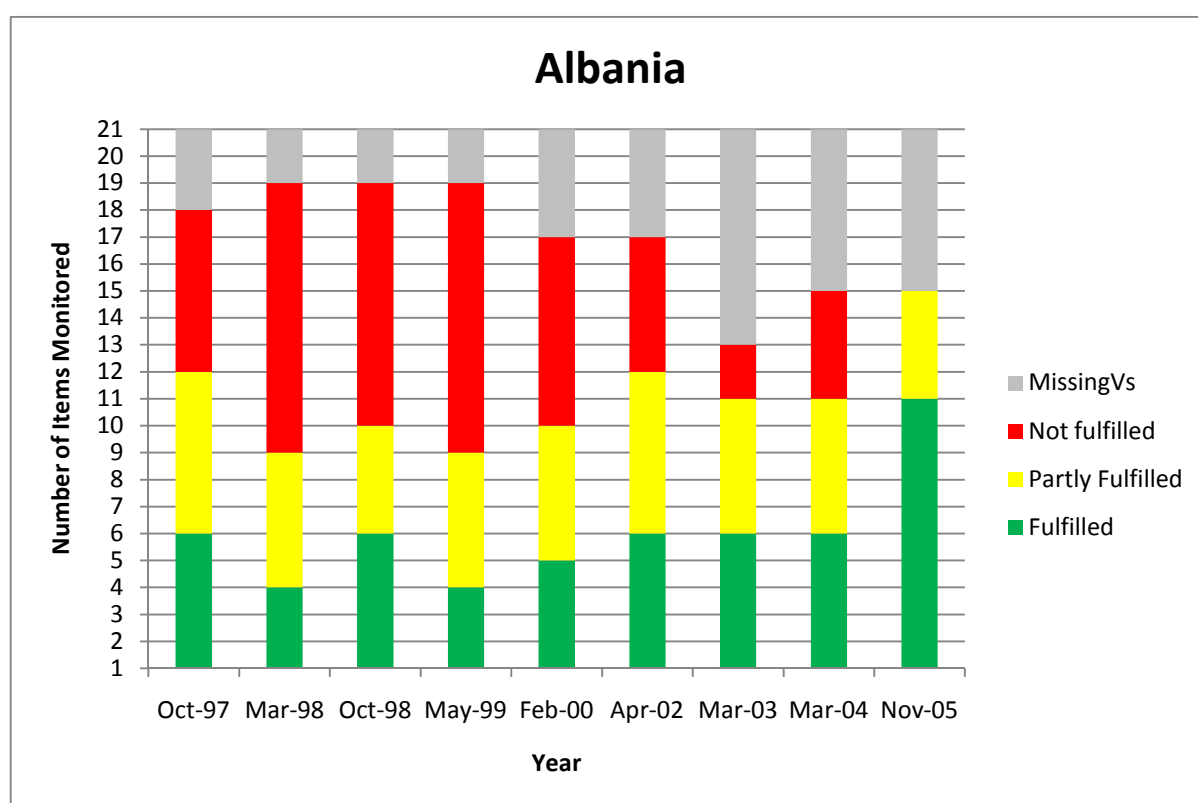


Figure 6.1: Indicator II for Albania

These statements are indicative of the fact that the items on the list of verifiable elements do not contain detailed qualitative content setting benchmarks as to whether or not an expected level is reached or not. Progress identified in the reports is apparently based on domestic trends, rather than meeting an external standard. An example from the 2005 report illustrates this point: The Commission recommended the conclusion of an SAA with the country

(indicator III) based on the finding – among other – that the country is politically more stable having successfully mastered a smooth transition to a new government in summer 2005 (Commission of the European Communities 09.11.2005: 8). This quote illustrates the opposite of benchmarks: under the prevailing circumstance of political instability, the slightest reform steps are warmly applauded and extensively commented, showing that any benchmark for monitoring is set *within* the country under scrutiny, rather than from the monitoring institution. With regard to the research question of consistent application of conditionality I conclude that the monitoring practice is consistently applied (indicator II). However, the test for consistent application comprises indicator III as well: I found that the Commission suggests the enhancement of bilateral contractual relations despite persisting problems against the background of overall weak institutions and only relative stability. These finding runs counter to the idea of consistent application of conditionality, they are rather inconsistent.

6.2 FYROM

6.2.1 Regional Approach

FYROM presents a similar case to Albania: Both are non-signatories of the Dayton Framework Agreement, the Commission's list of requirements to be assessed therefore comprises general conditions only excluding compliance with Dayton obligations such as cooperation with the ICTY. FYROM – like Albania – maintains contractual relations in the form of a Cooperation Agreement signed in April 1997 awaiting its coming into force right after the first progress report for the country. Albania and FYROM's stance in the regional approach, therefore, differ significantly from the neighboring countries. Both are, however, subject to formally identical assessments of progress in meeting the EU's general conditions for advanced contractual relations. The analysis of FYROM's progress reports from 1997 until 2000 – when the country was awarded its SAA – reveals that FYROM performs best among all countries in the Western Balkans. Simultaneously, there is a strong variation with regard to the Commission's monitoring technique: Despite the high level of compliance identified in the reports, the number of items on the list of requirements is generally smallest in the case of FYROM.

In the Commission's first assessment after the regional approach had been initialled, FYROM is applauded for its credible commitment to continue the reform path and the one of

democratization: the country's constitution of 1991 is found to be complying with democratic principles. The report further finds substantial progress without neglecting the need for further progress in a number of areas such as independent media or law enforcement (European Commission Directorate General IA 03.10.1997: 5). Non-compliance with EU requirements refers to only two items, namely with regard to protecting human rights and the non-existing stable and regulatory framework with regard to reforming the economy (European Commission Directorate General IA 03.10.1997: 3).

The Commission's overall positive assessment of FYROM's democratic quality remains valid also throughout the subsequent observation period from 1997 to spring 1998 when the second conditionality report is presented. But:

“Public administration, however, tends to be inefficient and/or suspected of being unduly influenced, while the judicial system is still developing, overburdened and slow. Judges are appointed by the Republican Judicial Council (an independent agency) and confirmed by Parliament” (European Commission Directorate General IA 30.03.1998: 20).

The Commission's assessment reveals that in the case of FYROM, there is no non-compliance with regard to the Council's conclusions on conditionality in 1998. The problem quoted above, nevertheless, reveals the gap between constitutional or legal provisions and weak enforcement mechanisms against the background of only poorly developed public administration. Law enforcement mechanisms are no explicit item on the Council's list of requirements, even though their status quo clearly impacts on a number of other dimensions that are subject to conditionality, such as effective human rights protection. Despite qualifying public administration as tending to be “inefficient” or “unduly influenced” none of the items is found to be unfulfilled. In the case of earlier voiced criticism regarding human rights protection, the 1998 report benevolently comments the status quo: pursuant to the ruling government's reform commitment, human rights are found to be adequately protected (European Commission Directorate General IA 30.03.1998: 21). This judgment is clearly beyond strictly monitoring the requirements but rather anticipating the ruling government's attitude towards meeting them in the future. Indicator III or the Commission's recommendation for eventual advancement of contractual relations is, however, postponing this matter to “a later stage” given that FYROM already maintains contractual relations (Commission of the European Communities 15.04.1998: 5). The third report on conditionality issued in October 1998 also maintains the overall assessment that the country is well on track as functioning parliamentary democracy acting according to democratic principles (European

Commission Directorate General IA 19.10.1998: 20). The concern previously voiced on weak enforcement capacities of the public administration is echoed again:

“A large number of new laws has been adopted during recent years, but there is still only limited implementing capacity by the country’s public administration, especially at local level. The judicial system is still developing and remains overburdened and slow which has a negative impact on citizens’ confidence to exert their rights” (European Commission Directorate General IA 19.10.1998: 20).

The assessment of progress, nevertheless, remains identical compared to the previous observation period with one exception: the requirement of freedom of expression and independent media is found to be generally respected in 1998 (European Commission Directorate General IA 19.10.1998: 20). Interestingly, the report voices criticism on the country’s dealing with the nation-wide discussed Gostivar events, when two were killed and many wounded due to the abuse of authority by individuals. Despite international pressure, FYROMs government failed to implement the proposed steps (European Commission Directorate General IA 19.10.1998: 20). The critique is not reflected in the Commission’s assessment of progress with regard to fulfilling the Council’s requirements though. Against the background of a slightly improved assessment, the Commission’s recommendations again postpone the matter of improved bilateral contractual relations (Commission of the European Communities 28.10.1998: 5). Over the course of the following eight months, the fourth report on conditionality mentions fewer items explicitly even though the overall balance of compliance with conditions remains positive: out of 21 items, eleven are mentioned and commented upon. The assessment remains identical with regard to the previous observation period with again one exception: with regard to minority’s use of language before courts and public authorities a new presidential declaration is found to secure proper enforcement against the background of a new government that “seems determined to solve the main issues causing inter-ethnic tensions” (European Commission Directorate General IA 17.05.1999: 20). Ethnic Albanians are now found to be better represented in the country's public administration, there are also concrete measures taken with the support of the international community to help improve the situation in schools or public services. The use of language by national minorities – where in previous years cases of violations had been reported – is now also on the agenda. Against this background, the democratic process in the country is found to have reached “a new level of maturity” following the latest and third parliamentary elections held in October and November 1998 that resulted in a political transition (European Commission Directorate General IA 17.05.1999: 19).

The laws recently adopted are expected to be implemented in due course but against the background of a continuously weak administrative capacity throughout the country. Human rights are not monitored as detailed as in previous years, the report however states that the country has “a comprehensive set of legal provisions” for the protection of human rights (European Commission Directorate General IA 17.05.1999: 19). In its operational conclusions, indicator II and III do not reflect a consistent application that would be in line with progress identified:

“Due to the positive record so far, as well as the country's compliance with the relevant conditions, the Commission will present a report on the feasibility....” (Commission of the European Communities 26.05.1999: 10).

The Commission's recommendation to take the existing level of contractual relations one step further are based on a smaller number of items monitored and a decline in items found to be fulfilled regarding the Council's conditions. Therefore, the application of conditionality is not consistent.

6.2.2 Stabilisation and Association Process

The first assessment for FYROM in the series of stabilization and association reports is globally identical compared to the previous monitoring period with the noteworthy observation that once again the number of items on the list of verifiable elements declines further.

With regard to the fulfillment of requirements, the free and fair conduct of elections is found to have been absent in the light of irregularities reported during presidential elections:

“The presidential election was characterized by complaints of irregularities in voting procedures, isolated violent incidents, and ultimately a refusal on the part of the opposition SDSM party to recognize the newly elected President” (European Commission Directorate General External Relations 09.02.2000: 20).

Other challenges relate to the country's ethnic composition as acknowledged by the constitution: among others, it encompasses the question of ethnic representation of some 20 per cent of ethnic Albanians. The report states the governments open attitude towards meeting the Albanian expectations with regard to being properly represented among teachers and in higher education. For the first time, ethnic Albanian parties participated in the country-wide

presidential race, the expectations discussed in the electoral campaign voiced the aspirations of many, they are now found to be on the government's agenda (European Commission Directorate General External Relations 09.02.2000: 21-22).

Generally, the country's overall positive performance shown over the last years is found to have come under pressure following the situation in Kosovo and the resulting massive influx of refugees and the ongoing international presence in the country. The democratic process, however, continued to function normally, a fact that leads the Commission to praise the country's maturity and stability of political institutions. In its operational conclusions, the Commission presents its overall recommendation for FYROM:

“Acknowledging the positive record achieved by the country, its exemplary role in the region, and its compliance with the relevant conditionality, the Council adopted negotiating directives for a Stabilisation & Association Agreement with the former Yugoslav Republic of Macedonia on 24 January 2000, on the basis of the Commission's feasibility report and recommendation for negotiating directives. The Commission is making the necessary preparations with a view to opening negotiations during March 2000” (Commission of the European Communities 02.03.2000: 5).

This statement on progress could, however, not be tracked by the document analysis conducted for indicator II that sees a significant decline in items actually assessed. Among those not mentioned in the 2000 report are items with regard to democratic principles and one out of eight items relating to human rights protection and the rule of law. With regard to minority protection, none of the three items is explicitly mentioned even though the report made a broad statement on the virulent topic that later leads to war-like incidents namely in the north of the country where the majority is ethnic Albanian. Like in the previous observation period, the analysis of the respective report does not show a higher level of meeting the Council's requirements. The Commission's recommendations, however, speak a different language. Indicator II and III therefore, do not strengthen the idea of consistent application.

6.2.3 Discussion: Indicator II and III for FYROM

The Commission's assessment of FYROMs performance in meeting the Council's requirements under the principle of conditionality differs compared to its neighboring countries. Not only with regard to its starting position in 1997 but also with regard to a significantly lower number of requirements explicitly mentioned. Interestingly, in 2000, when the Commission recommends the beginning of negotiations for an SAA acknowledging the

countries “exemplary role” in the region, the number of items is the smallest in the entire observation period, not only within FYROM, but also across the Western Balkans.

The fact that the number of monitored items decreases in May 1999 and February 2000 correlates with a decrease in the number of fulfilled items, meaning that the Commission does not explicitly comment on a condition regardless whether or not the contextual assessment suggests compliance. In May 1999 for instance, the report finds that following elections “a political transition is taking place”, thus confirming “that the democratic process has reached a new level of political maturity” (European Commission Directorate General IA 17.05.1999: 19). It does, however, not explicitly mention whether or not the government and authorities act in line with constitutional provisions rendering this particular item unmeasured within the strict analytical boundaries applied.

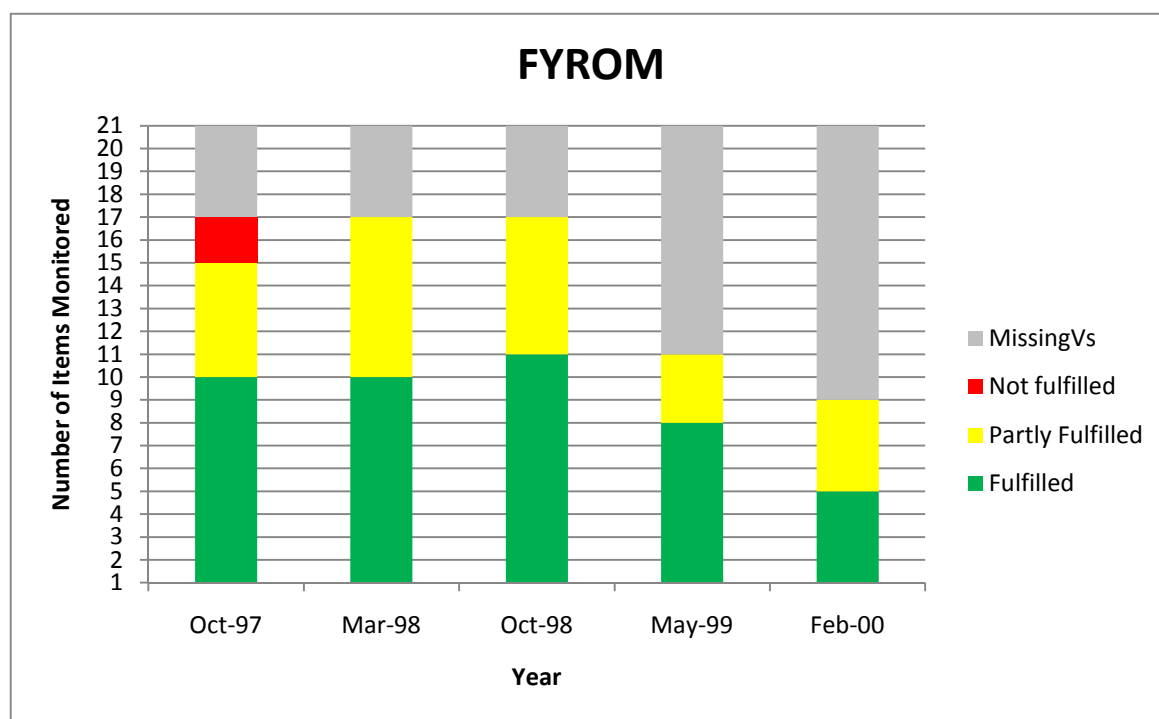


Figure 6.2: Indicator II for Albania

As the above quotation showed, FYROM is the best in class from the Commission's perspective. The document analysis could not corroborate this view as not monitoring items on the list of requirements does not suggest they are fulfilled in the first place.

Preconditions in 1996 were promising in this regard: FYROM had its constitution of 1991 respecting democratic principles and it did not participate in the wars, rendering the establishment of friendly relations to neighboring countries feasible. Obstacles in meeting the

requirements remained generally weak enforcement mechanisms as well as challenges relating to the ethnic composition of the country. Both problems that apparently hindered the fulfillment are rooted within the country, independently from outside: the protection of the so-called Albanian minority and their adequate representation accounted for a serious challenge to domestic politics, especially during and after the Kosovo crisis. Even though the Commission rated FYROM's efforts in dealing with the influx of refugees as in line with the international community, it also added salience to the domestic status quo. Both factors are not encompassed in the Council's list of requirements.

The analysis of indicator II and III compared that the Commission's recommendation to advance bilateral contractual relations was not based on an earlier assessment of having met the Council's conditions. Even under the assumption of dynamic rewarding, where a higher level of fulfillment is required during the process of intensifying relations, this positive trend is neither present for the case of FYROM. This gap between the Commission's monitoring and its recommendations runs counter to the idea of consistent application of conditionality.

6.3 Croatia

6.3.1 Regional Approach

Croatia faces the entirety of requirements for fulfillment prior the conclusion of bilateral contractual relations that is general and specific conditions. Among the latter, the cooperation with the ICTY, namely the extradition of war crime indictees located or suspected to be located in Croatia is of great importance. The imperative of friendly, good neighborly relations is the second salient condition with regard to fulfilling the most basic requirements. As concerns the question of consistent application of conditionality, I would expect the specific conditions to be monitored as pre-conditions for the set of general conditions.

Throughout the observation period from 1996 to 2000 when Croatia was rewarded its SAA, two topics dominate the Commission's assessments: firstly, the reports suggest that Croatia has a specific political scene that is one-party-dominated namely by President Tudjman. Until his death in late 1999, the Commission repeatedly voiced concern about the general attitude towards meeting the EU requirements for reform. As a result, the mismatch between public statements or basic law provisions is belied by the domestic situation, a finding that had also

been reported for FYROM. A second Croatian specificity is the protection of minorities and resettlement of refugees seeking to return: The Commission's first assessment in 1997 attests non-compliance with any of the items relating to minorities and their adequate protection.

Similar to its neighboring countries, Croatia is a multi-ethnic state whose population consists of 78 per cent ethnic Croatians, 12 per cent ethnic Serbs and 9 per cent Muslims as well as various other minorities. The resettlements taking place during and after the war completely changed this picture: The issues of internally displaced persons and those wishing to return – some 120,000 Serbs – pose a serious challenge to post-war-Croatia: The first conditionality report finds that with regard to basic minority rights, such as the right to establish and maintain own educational, cultural and religious institutions, the draft law being discussed during the observation period contains weaknesses as concerns Serb and Italian ethnic minorities. Similar problems regarding weak or no enforcement of constitutional or legal provisions hamper adequate opportunities to use native languages except Croatian before courts and public authorities. The Commission is thus critical on the overall attitude towards the respect of minorities and most importantly towards assuring safe refugee return:

“President Tudjman's August 1997 inaugural address notably did not mention reconciliation, return of refugees and displaced persons, human rights, amnesty or, indeed, the values of a civic state. Nor has there been public clarification of an undertaking already privately given by President Tudjman that Croatia will accept all Croatian Serbs who wish to return (including from FRY and Bosnia-Herzegovina) - although this position is confirmed in meetings between ministers and IC representatives. Whatever the (conflicting) public statements on the return of refugees, they are belied by the situation on the ground” (European Commission Directorate General IA 03.10.1997: 7).

The Commission's criticism covers both the specific condition of refugee return as well as the general condition of meeting standards regarding the protection of minorities.

With regard to constitutional provisions respecting democratic principles, the Commission identifies a gap between the country's 1990 constitution and its poor performance due to the “total dominance of the political scene of one political party” (European Commission Directorate General IA 03.10.1997: 6). This characteristic of Croatian politics in the mid-90's negatively affects the country's performance with regard to human rights protection and the rule of law, too: the Commission quotes a governmental report insisting “that there is no systematic violation of human rights in Croatia” (European Commission Directorate General IA 03.10.1997: 6). However, the Commission herself finds that recent legislative changes do not augur well for human rights respect. In the field of freedom of expression, recently

adopted amendments to the Criminal Code stipulate that “a person will be punished for publicly revealing information they know to be State or military secrets (yet there is no law on State and military secrets which would reflect international standards) (European Commission Directorate General IA 03.10.1997: 6 – brackets in original). The report is clear in judging Croatia’s performance in meeting specific as well as general conditions:

“Although some progress has been achieved, Croatia has not adequately complied with its obligations under the Dayton or Erdut Agreements, or the conditionality of the „Regional Approach”, some progress has been observed” (European Commission Directorate General IA 03.10.1997: 11).

Although the report does not repeat the notion of general and specific conditions that have to be met by Croatia, the report explicitly comments on ICTY or regional cooperation. In its recommendations for Croatia, the Commission not even mentions the option of offering bilateral contractual relations (European Commission Directorate General IA 03.10.1997: 11). This fact is consistent with the above findings that neither special conditions nor all general ones were met by the country.

The Commission’s assessment changes during the following monitoring period: the number of requirements found to be fulfilled drops, whereas progress is identified in more areas than before. Non-fulfillment of conditions remains high against the background of the political situation still being dominated by the HDZ. With regard to the political requirements, the Commission's judgment worsened: in spring 1998, the electoral law is found to be inadequate, the HDZ dominance negatively affects governmental action. The Commission neither found improvement with regard to the separation of power between state authorities or the implementation on all administrative levels (European Commission Directorate General IA 30.03.1998: 7).

Croatia’s performance in meeting its obligations arising out of the peace agreements is again closely monitored: irrespective of the on-the-ground situation, the Commission repeats its concern voiced in the previous report on the considerable mismatch between official statements and actual implementation on the ground:

“Officially, Croatia is fully committed to Dayton and Erdut implementation. However, President Tudjman’s recent speech to the HDZ party congress (21 February) raised serious concerns due to its indication of an apparent reversal of a number of Croatian commitments under Dayton and Erdut, including the commitment, basic to the Agreement, to respect the territorial integrity and sovereignty of BiH and to facilitate multi-ethnic returns both in Croatia and throughout the region. The speech (excused by officials as unscripted, unrepresentative of government policy, and destined for a specific audience) is indicative of the continuing existence, in official policy, of a hard-line, non-conformist, non-progressive element which is seriously damaging Croatia’s reputation and aspirations” (European Commission Directorate General IA 30.03.1998: 10).

Having said that, the report devotes an entire paragraph to refugee return alone and finds that obstacles prevent effective enforcement of obligations provided in the respective peace agreements. The return process of refugees has largely stalled, due to lack of effective mechanisms. There are various obstacles to return, the economic situation of return areas is much worse than in the rest of the country. The authorities, “at least at local level, apparently lack the political will to act in a manner which would encourage returns and are reported, in a number of instances, to be actively discouraging or obstructing returns” (European Commission Directorate General IA 30.03.1998: 10). The assessment of fully cooperating with the ICTY echoes the assessment: Overall cooperation with the ICTY is “less than optimal” (European Commission Directorate General IA 30.03.1998: 11). The Erdut conditions are not found to be met. Croatia's attitude to BiH is considered problematic due to a strong Bosnian Croat lobby and discriminatory visa regimes. Agreements put in place were not found to be fully respected (European Commission Directorate General IA 30.03.1998: 12). To conclude, the Commission's report of spring 1998 does not find specific conditions fulfilled. Furthermore, it is critical about fulfillment of the majority of items on the list of general conditions. What is more, it does not find a political climate that promotes effective enforcement of legal provisions already provided. On the contrary, the HDZ dominance in the party system affects governmental action and interferes with authorities. Indicator III – the Commission's recommendation of whether or not contractual relations should be enhanced at the time being – is consistent with the analysis of the progress report in stating that this question “is premature”:

“Without a clear commitment to and implementation of its obligations under the Dayton and Erdut Agreements, ethnic reconciliation and democratic reform, Croatia is continuing to seriously hamper its chances of realizing its European ambitions” (Commission of the European Communities 15.04.1998: 3).

The above quotation illustrates the double face of conditionality: on the one hand, the Commission's monitoring does not find a clear commitment to meet the requirements. On the other, actual implementation leaves a lot to be desired. The overall critical assessment finding non-compliance with requirements prevails throughout the subsequent period reported in autumn of 1998. Again, 19 items are explicitly mentioned in the report, ten of which are found to be not fulfilled, progress in six and compliance with only three requirements finding

positive development with regard to minority protection and refugee return and echoing the overall positive trend with regard to reforming Croatia's market economy.

As in the previous report, the Commission's comments on the HDZ as the ruling party who dominates in entire spheres of Croatian life, it is found to concentrate power and authorities do not act according to the constitutional provisions (European Commission Directorate General IA 19.10.1998: 8). In terms of human rights and the rule of law, some minor improvements in certain areas are found to be underway, "but the human rights record remains unchanged" (European Commission Directorate General IA 19.10.1998: 8): There is a continuous infringement of basic rights, especially in the media sector the judiciary is used selectively against those who criticize the government. Other rights are generally respected but in practice are not offered to all on equal terms. The right to property, for example, still has discriminatory elements that hinder the return of refugees, notably Croatian Serbs (European Commission Directorate General IA 19.10.1998: 9). With regard to regional cooperation, Croatia has an overall positive approach and the report lists activities towards each of the neighboring countries. Especially those with BiH saw a major breakthrough with economic relations also developing. As concerns the country's obligations with the peace agreements, Croatia still interferes in BiH despite criticism of the international community. The report states that it is too early to assess progress, as it is also a matter of intensified monitoring how well returning refugees manage their lives upon return (European Commission Directorate General IA 19.10.1998: 11-13).

Overall, Croatia's performance is slightly better than during previous observation periods, the Commission found "some progress...in relation to a few of the relevant conditions" However, the question of opening contractual relations is still called "premature" in late 1998 (Commission of the European Communities 28.10.1998: 3).

Against the background of a high record of non-fulfillment of requirements, the Commission's October 1998 report did not witness any major development in the countries general credibility of reform. The subsequent report is issued fourteen months later in late spring 1999. To some extent, it deviates from the usual structure and does not monitor all but only 15 items on the list of 22 verifiable elements. Where it explicitly mentions the Council's requirements, it follows the assessment of the previous report. The overall political situation of one-party-dominance has changed to the better, as some officials resigned from parliamentary party positions. However, "satisfactory progress in key areas has not yet been achieved" (European Commission Directorate General IA 17.05.1999: 8). The dominance of

the President and the ruling party has again had a negative effect on the separation of powers, in fact, there has been no significant progress in this area (European Commission Directorate General IA 17.05.1999: 8).

In terms of human rights, the report takes note of the now “more cooperative approach” of the country but problems remain: the international legislation that has been adopted is found to be applied in a selective manner only, the situation in the media also remains critical. The main organs are still controlled by the ruling party, substantive Council of Europe recommendations have not yet been presented to the parliament for the necessary consent (European Commission Directorate General IA 17.05.1999: 9).

The case of minority protection presents yet another field where Croatia has undertaken a strong, formal commitment in signing the relevant European and international legislation, but effective on-the-ground enforcement is often lacking. There have thus been no changes to the rights to establish own institutions for minorities (European Commission Directorate General IA 17.05.1999: 10).

With regard to the countries specific conditions, Croatia’s stance on regional cooperation actively pursues the normalization of political relations. The report elaborates the state of relations with all neighboring countries in detail: Officially, the country remains fully committed to the peace plans, but compliance is not fully satisfactory. There is still interference in BiH and Croatia’s cooperation with the ICTY is rather uneven (European Commission Directorate General IA 17.05.1999: 11-12).

The analysis for the spring 1999 report reveals that the numbers of items not-fulfilled are identically to the previous assessment of autumn 1998. What it does find however is a change in attitude, such as the now more cooperative approach in providing adequate human rights protection. The second noteworthy change beyond the set of requirements is the Commission’s finding that the political scene changed to be better. These two findings sufficed to cause a change for indicator III: whereas an identical number of non-fulfilled items rendered the question of contractual relations “premature”, the Commission now finds that negotiations will be opened when the country met the relevant conditions. At the appropriate time, the Commission expresses its readiness to prepare the technical report on the feasibility of the opening of negotiations for bilateral contractual relations (Commission of the European Communities 26.05.1999: 9). This recommendation is inconsistent with the results of the analysis of indicator II: despite persisting non-fulfillment of specific and general conditions, the Commission’s wording for indicator III moves Croatia on the stepping stone to actually

negotiating contractual relations. Inconsistency is specifically present, as the Commission waters down the relevance of meeting special conditions first.

6.3.2 Stabilization and Association Process

The report of 2000 is the first in the series of the Stabilization and Association process. The most important events throughout the latest monitoring period have been two-fold: President Tudjman died in December 1999 leaving room for hope for a new reform era in Croatia. These hopes were met by parliamentary elections held in early January 2000 that brought about nothing less than a “radical” change to the political environment in the country (European Commission Directorate General External Relations 09.02.2000: 9).

Against this encouraging background, the number of items explicitly mentioned drops again, this time down to only 13 out of 22 issues. Five items are still found to be not meeting EU requirements. Progress is found in seven areas and only one condition is found to be fulfilled: the right of minorities to establish their own institutions continues to exist, though with remaining problems.

The political scene is, however, still dominated by a “non-democratic atmosphere” (European Commission Directorate General External Relations 09.02.2000: 9). The desperately needed new electoral law did not address all the key issues raised. Discussion was started but stalled. Against this background, elections “were conducted in a calm and orderly manner” and showed “growing political maturity” by the Croatian electorate (European Commission Directorate General External Relations 09.02.2000: 9).

The judicial system, its independence from the strong executive is still found to be a concern, neither has there been progress in the separation of powers. Generally, “the new leadership appears to be committed to substantial changes in policies with regard to the democratic shortcomings, which will create conditions for closer ties with the European Union” (European Commission Directorate General External Relations 09.02.2000: 10).

In the field of human rights and the rule of law, the process of implementing basic international conventions continued in order to bring the country “into conformity with international standards” (European Commission Directorate General External Relations 09.02.2000: 10). The situation within freedom for the electronic press generally remains a concern, the HDZ influence often still prevails. The government actively supports the NGO sector. There has been adopted a new public assembly law, but it did not take stock of all

recommendations of the Council of Europe. In the case of minority protection, number of laws and expected modifications of existing laws have not been finalized (European Commission Directorate General External Relations 09.02.2000: 11).

The market economy reform did “not achieve a soft landing” (European Commission Directorate General External Relations 09.02.2000: 11), structural problems, especially due to a large budget deficit slowed down developments. Enterprise privatization has gained momentum, especially in the banking sector. The banking system’s overall situation remains tense although new legislation has been put in place in December 1999.

As in previous reports, the Commission monitors Croatia’s compliance in meeting its special conditions: it finds that normalization continues in political relations with neighboring states, but globally slowed down due to the Kosovo crisis. Within the newly founded Stability Pact, Croatia took an active and cooperative role (European Commission Directorate General External Relations 09.02.2000: 12). The wording as regards the peace agreements is more encouraging than in previous reports, there is progress, but the issues how to solve the post-war crisis essentially stay the same. Cooperation with the ICTY remains an issue, Croatia is the only country cooperating so far, but this cooperation remains “uneven” and therefore, EU requirements for full cooperation have not been met (European Commission Directorate General External Relations 09.02.2000: 13). The report expresses however hope, that these conditions would improve under the new government. To summarize, the analysis of the progress report reveals an overall negative balance of Croatia’s performance in meeting the Council’s requirements, both the general conditions and the special ones. The Commission’s 2000 report finds the smallest number of non-fulfilled items. The greatest number of progress identified in meeting the requirements but simultaneously the smallest number of items actually fulfilled: Indicator II thus finds no even compliance regarding specific or general conditions. In its recommendation or indicator III, however, the Commission welcomes the new government’s encouragement.

“...to undertake the necessary steps in order to enable the European Community to broaden its assistance and prepare a report on the feasibility of the opening of negotiations for a SAA”
(Commission of the European Communities 02.03.2000: 4).

The fact of elections held and the installation of a new government alone sufficed to let the Commission express signs of hope in its 2000 report. First positive developments identified against the background of uneven fulfillment of conditions are welcomed although they seem

to be based on nothing less than a change in attitude as none of the items comprising democratic principles is found to be fulfilled.

6.3.3 Discussion: Indicators II and III for Croatia

Croatia's set of Council requirements comprises two sets of conditions: general conditions applying to all countries of the region and special ones, notably covering the countries obligations arising out of the peace agreements. The table presents an over-time comparison of the Commission's assessment of Croatia's performance in meeting both sets of conditions. Firstly, the total number of conditions monitored drops from 19 to 13 throughout the observation period. The document analysis also reveals that within the first four years, the majority of items monitored is not found to be complying with EU requirements.

The last report in the series shows a decline in non-compliance and progressing development in the majority of items monitored. At best, the Commission finds three out of the set of 22 items fulfilled, namely in the field of economic reform and overall macro-economic stability and with regard to minority rights.

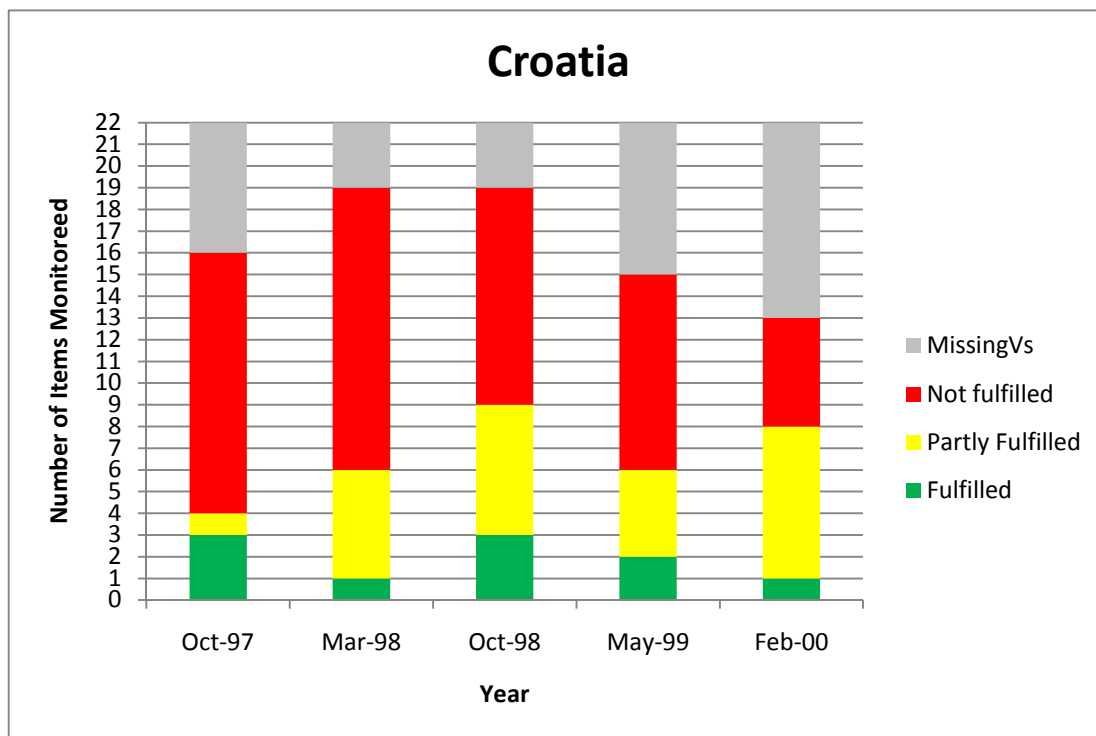


Figure 6.3: Indicator II for Croatia

What is also evident from the reports is that the prevailing topic in the time span from 1996 to 2000 is the overall political climate that renders speculations about the country's willingness to reform somewhat pessimistic. The Commission noted several times that there is a gap between public statements by the President and the on-the-ground situation in enforcing existing legal provisions.

The analysis for Croatia showed that against the background of pervasive non-fulfillment, it is a country's political willingness that has to change for the better in the first place. Once a condition is partly fulfilled, the monitoring focuses on implementation alone. In short, the Commission's monitoring is not about finding fulfillment or non-fulfillment. It is also keeping an eye on the government's willingness to actually change the status quo. This fact is independent of weak enforcement mechanisms that would eventually hamper effective implementation.

What is most inconsistent with a strict application of conditionality is that the above result also comprises the monitoring of special conditions that were meant to present an entry barrier to countries seeking contractual relations with the Union. The gap between Indicator II and III is thus clearly inconsistent, especially since special conditions are not fulfilled. If the inconsistency is present with regard to fully cooperating with the ICTY, it is even more likely to be inconsistent with regard to general conditions.

6.4 FRY/ Serbia-Montenegro/ Serbia & Montenegro

6.4.1 Regional Approach

With regard to overcoming old legacies and solving questions of unresolved statehood, the Federal Republic of Yugoslavia (FRY), the State Union of Serbia-Montenegro or Serbia and Montenegro underwent the greatest reforms in its constitutional architecture throughout the observation period. What unifies them with neighboring countries, notably with BiH is its complex constitutional architecture in 1996. Established in 1992, the Federal Republic consists of the two republics Serbia and Montenegro. Compared to the previous constitution, the status of the autonomous provinces of Kosovo and Vojvodina is no longer provided for on the federal level, but back then within the Serbian constitution. FRY is a multi-ethnic community with many diverse, cultural, religious and linguistic characteristics: according to the 1991 census, 67 per cent of the population were Serb and Montenegrins, while 33 per cent

belong to about 30 different minority groups (cf. European Commission Directorate General IA 03.10.1997: 14). Among those 30 minority groups are those that were created by the disintegration of Yugoslavia, for example, Croats. Like in neighboring countries, the Commission's first overall assessment is clear in determining a political landscape that is split between constitutional provisions and their implementation: "by virtue of the constitutional balance, the Serbian parliament is in practice more powerful than the FRY parliament" (European Commission Directorate General IA 03.10.1997: 12). Due to collision and overlap between the federal and the republics constitutional provisions, effective separation of power is found to be non-existent, as the government is not necessarily inclined to act in conformity with constitutional norms. The gap between legislative provisions and implementation is also present in the human rights field where the Commission detects a general "policy of disregard" (European Commission Directorate General IA 03.10.1997: 12). In theory, the constitution contains a basic provision in line with international standards in human rights but these are either in conflict with provisions in the republic or implementation falls short. Control over basic rights is often exerted "by means largely based on the former communist party system" (European Commission Directorate General IA 03.10.1997: 14).

The Commission's assessment is clear: "there is no obvious *commitment* to reform, and, to date, the main beneficiaries under the previous system retain control of the process" (European Commission Directorate General IA 03.10.1997: 15 – emphasis in original). Both statements – no reform commitment and uneven power balance in the two republics – names a major dilemma for the Commission: similar to BiH, the on-the-ground developments as monitored in the Commission's reports rests on the *conditio sine qua non* that any contractual relations would – by definition – be concluded at the federal level. Once these developments shift into different directions, namely fulfillment of conditions or the opposite, the Commission may name progress but cannot offer any alternative reward other than waiting for the constitutional setup to be changed accordingly.

Faced with general and specific conditions, the Commission is also to assess FRY's handling of international obligations, such as dealing with minorities on the ground: Minorities are affected to different degrees, with Kosovo Albanian experiencing the greatest difficulties. Moreover, the report finds however a general disrespect of international obligations:

"Faced with the gradual withdrawal of international emergency humanitarian aid, in order that the FRY may take on its responsibilities towards the refugees, the FRY has stated that the integration of refugees depends on „significant economic support from the IC“. Given the lack of compliance of the FRY with its international obligations, and the consequent lack of development aid, there is

little hope alleviating the conditions under which many refugees are presently living in FRY.”
(Citation in original) (European Commission Directorate General IA 03.10.1997: 14).

The country's efforts towards increasing regional cooperation are evaluated as having progressed, but are of uneven character. Most importantly, FRY is not found to be cooperating with the ICTY nor is there any cooperative approach to solve the unsettled status of the Kosovo province.

The 1997 report explicitly mentions 20 out of 22 items, it finds compliance on the federal level for one item, progress in five and non-compliance in 14 issue areas. Indicator III or the Commission's recommendation based on the Councils requirements fulfillment is consistent with the aforementioned analysis: in its operational conclusions, there is not even the slightest hint to contractual relations (cf. European Commission Directorate General IA 03.10.1997). Irrespective of any progress in meeting EU conditions, the report of 1998 problematizes a country-specificity that tackles the constitutional arrangement of the Federal Republic:

“Given the diverging paths which Serbia and Montenegro appear to be following in terms of democratic reforms, it is useful to distinguish between developments in the two republics and at the federal level” (European Commission Directorate General IA 30.03.1998: 13).

The Commission's solution to the earlier mentioned dilemma is taking the lead in separately dealing with the two republics, bearing in mind however that contractual relations cannot be reached anyways. This might be consistent with regard to the domestic status quo, it is inconsistent under the condition that the rewarding end is solely directed at federal states. If this distinction would find one republic fulfilling the conditions while the other would not, the rewarding practice could not be applied accordingly as long as the constitutional setup of FRY does not allow otherwise.

The constitutional architecture is thus the overarching challenge to monitoring and rewarding alike. The spring 1998 report identifies a lack of progress: “Transparency, accountability and separation of powers remain largely non-existent in Serbia” (European Commission Directorate General IA 30.03.1998: 14). For Montenegro, the Commission states that “with regard to the application of democratic principles there have been positive developments in Montenegro” (European Commission Directorate General IA 30.03.1998: 13). As much as these quotations give credit to the two republics efforts in meeting EU requirements, monitoring both separately is inconsistent with the type of agreements on offer.

The autumn 1998 report claims that the spring assessment largely remains valid. Following elections in Montenegro, the Commission finds evidence for “credible commitment to democratic reform” (European Commission Directorate General IA 30.03.1998: 14). With regard to human rights, there still are “practical problems arising from the collision and overlap between federal and republican regulations” (European Commission Directorate General IA 30.03.1998: 15). While steps of improvement have been made in Montenegro, Serbia’s independent media are working within “a state of continuous insecurity” because legal provisions are obscure and inconsistent (European Commission Directorate General IA 30.03.1998: 15).

The special condition “regional cooperation” is found to have advanced in political and diplomatic relations but not in terms of increased trade relations. Relations with Albania exist though on a low level and are feared to cool down further against the background of events in Kosovo. What is more, the Commission finds no change in attitude towards cooperating with the ICTY. Overall, the autumn 1998 report comments on 14 out of the 22 items of the Council's requirements, one is fulfilled, there is progress in three and non-compliance in 10 issue areas. Compared to the previous year, this presents a downward trend. What is even more important is that the Commission herself is aware of divergent trends in the two constituent republics. Indicator III is consistent with the overall non-compliant behavior of the Federal Republic: it does not offer any possibility to open negotiations at this point (Commission of the European Communities 15.04.1998).

Roughly six months later, the subsequent report states that no evidence of commitment for democratic reform is visible in Serbia, whereas in Montenegro the general trend towards a more positive environment continued (European Commission Directorate General IA 19.10.1998: 14).

The uprising crisis in the province of Kosovo presents yet another hurdle. Trends identified earlier persisted over the last monitoring period while “the constitutional rift between Serbia and Montenegro over federal versus republican competencies” also remained in place (European Commission Directorate General IA 19.10.1998: 13). Once it comes to the examination of single items on the Council’s list of requirements, such as independent media, the assessment is double edged: In Serbia, independent media operates under legal and financial insecurity, whereas in Montenegro a process of liberalization is underway (European Commission Directorate General IA 19.10.1998: 15). The rift between the two republics is further aggravated by events in Kosovo:

“With the escalation of fighting in Kosovo, the question of minority rights has clearly become a dramatic one. The Serbian police and the army have pursued brutally repressive policies involving the systematically intimidation and killing of Albanian civilians in such a way as to prevent the KLA from receiving shelter or support from the local population” (European Commission Directorate General IA 19.10.1998: 16).

With regard to regional cooperation, the country's balance is a mixed one: while there is progress with some neighbors, the talks on SFRY succession have now been frozen. The escalation in Kosovo has cast a cloud over relations with Albania (European Commission Directorate General IA 19.10.1998: 18). The Dayton obligations have been largely ignored following the political situation in Kosovo, the FRY's standpoint on cooperation with the ICTY remains unchanged (European Commission Directorate General IA 19.10.1998: 18).

In total, the analysis of the Commission's autumn 1998 report reveals that 16 out of 22 items are explicitly mentioned, there is no compliance with any of the items, progress in four and non-compliance in twelve issue areas. What became clear in the report is that the situation in Kosovo negatively impacted on the already fragile situation indicating a downward trend compared to previous observation periods. The Commission's recommendation regarding the eventual upgrading of relations is again consistent with the analysis of the progress reports:

“Given the present state of relations with the FRY, and the continuing conflict in Kosovo, discussion of any of these would be inappropriate” (Commission of the European Communities 28.10.1998: 4).

The report of May 1999 assesses the worst performance of the Federal Republics throughout the entire observation period. NATO air strikes against Serbia are presented as a result of the countries “continuing refusal...to negotiate or pursue diplomatic solutions [...]” (European Commission Directorate General IA 17.05.1999: 18). The democratic development in FRY thus has been “drastically influenced” (European Commission Directorate General IA 17.05.1999: 14) over the current observation period. The report also corroborates that the two republics emerged on divergent paths regarding their future as democracies. The judgment of progress on the federal level is found to be largely identical to the last report, but the situation further worsened as the constitutional rift between Serbia and Montenegro renders constitutional and legal provisions “largely irrelevant” due to the “on-going power struggle between the two republics” (European Commission Directorate General IA 17.05.1999: 14). In late March 1998, Serbia declared a state of war, whereas in Montenegro, there have been continuing, positive impulsions. The respect of human rights and the rule of law are questioned both at federal and the Serbian level. Following the beginning of the air strikes and

the declaration of the state of war, there is no free speech in Serbia during the report's observation period. Administrative and judicial proceedings are found to be abused for political purposes. Cases of arbitrary detention and systematic torture, esp. in Kosovo had been reported even prior NATO air strikes. The position of minorities has not changed, not only in Kosovo. In Montenegro, however, constitutional and legal obligations further contrast sharply to the situation in Serbia (European Commission Directorate General IA 17.05.1999: 16-17).

Due to events in Kosovo, regional cooperation worsened with Albania and FYROM, the tremendous influx of refugees fleeing the province has destabilizing effects on the neighboring countries. Montenegro yet again has a more positive scorecard. Cooperation with the ICTY has been lacking (European Commission Directorate General IA 17.05.1999: 18). The analysis identifies no fulfillment with any of the conditions, the number of monitored items totals again 16 out of 22. Claiming "obvious non-fulfillment of relevant conditions", the Commission's recommendation still finds any discussion on future contractual relations "inappropriate" in May 1999 (Commission of the European Communities 26.05.1999: 9).

The subsequent observation witnessed the ending of NATO air strikes against Serbia after 78 days. The situation in Kosovo is as worse as reported previously and democratic principles suffer from inherent weaknesses as noted in earlier reports:

"The inherent weaknesses identified in previous reports with regard to the principles of democratic governance (effective separation of powers, representative government, accountable executive and independent judiciary) in the FRY remain as serious as ever. In many areas, the practice has further deteriorated" (European Commission Directorate General External Relations 09.02.2000: 14).

The federal government is found to have become indistinguishable from the Serbian government. The Montenegrin government refused to accept the State of War, it declared its territory might not be used in the case of conflict with NATO; following the end of the air strikes, Montenegro is now found to be seeking a re-definition of its relations with the Northern Republic but there is an inevitable rift between the Federal/Serbian and the Montenegrin authorities. There is a proposal from the Montenegrin side to form a confederation but these were rejected in Belgrade (European Commission Directorate General External Relations 09.02.2000: 14).

The pathways of the two republics differ: while the balance in Serbia is marked by restrictive measures and the use of force, Montenegro's coalition government pledged itself to follow a

“democratically oriented reformist course” (European Commission Directorate General External Relations 09.02.2000: 15). To illustrate the rift between both republics, the item “independent media” might again serve as an illustrative example: While Serbia took over control of major independent media in Belgrade under the State of War, the overall situation in Montenegro is found to be “now at a level comparable with the West” (European Commission Directorate General External Relations 09.02.2000: 16). The status quo in Montenegro, however, is not without problems:

“Thus, Montenegro has built up a police and state security apparatus that is reportedly fifteen thousand strong, for a total population of less than 600.000 inhabitants. This, and the need to take action against criminal /business elements in Montenegrin society, bears watching. In this political environment, it therefore remains difficult to draw firm conclusions about progress in reforming the (economic) underpinnings of the Montenegrin republic - criticisms include inconsistency and lack of transparency of the privatization process” (European Commission Directorate General External Relations 09.02.2000: 15).

With regard to the country’s special conditions, compliance with the Peace Agreements obligations remains patchy, including cooperation with the ICTY. As the report puts it, „the indictment of Slobodan Milosevic and other senior officials by ICTY during the NATO air strikes has ended even the semblance of cooperation which existed in Serbia prior to the conflict” (European Commission Directorate General External Relations 09.02.2000: 19). In sum, the 2000 assessment mirrors a domestic status quo of general non-fulfillment of conditions, be it general or special conditions. Also similar to previous years, the Commission explicitly comments on 16 out of 22 items. Its recommendation or indicator III is also of great consistency: given the performance of the country on federal level, contractual relations “cannot be considered at this time” (Commission of the European Communities 02.03.2000: 5). Indicator III also adds to the Commission’s awareness that overall reform trends within the constituent republics point into different directions: even though Montenegro performs promising with regard to fulfilling the conditions, the constitutional status quo excludes the option of rewarding the republic for compliant behavior.

6.4.2 Stabilisation and Association Process

The 2002 report is the first one not only under the successor policy framework, but also gives credit to a major change in the domestic status quo of FRY: With Milosevic’s extradition to The Hague, the election of a new government and the embarking on a road to transition, the

report assesses options and limits of reform under the current constitutional structure of the country. It finds that the three constitutions, the federal one, the Serbian and the Montenegrin one are not harmonized but partly overlapping rendering effective democratic institutions desirable (Commission of the European Communities 04.04.2002: 6). The Commission further acknowledges Montenegrin action to actually reform the current constitutional provisions that had so far been neglected by the Serbian authorities. Overall, the first report in the SAP series is clear in stating a positive development as of 2001 that supports the idea of a fully fledged commitment towards reform. It is found that FRY moved on quickly from post-conflict resolution following the NATO air strikes to transition. The prevailing concern on the republic's future still hinges on unresolved issues of constitutional status, given that Montenegro continuously follows a more promising reform path than Serbia. The overall positive assessment of political reform undertaken in FRY however ended the isolation. The findings in the annual SAP report reiterate that the countries special conditions such as cooperation with the ICTY are to improve irrespective of an existing transformation agenda in order to facilitate the integration into European structures (cf. Commission of the European Communities 04.04.2002).

The unresolved questions of constitutional status are reflected in the report, as they literally consist of three distinct perceptions: the one on the federal level, the one within the republics and the one in Kosovo. As the report notes the entities “in reality have separate legislative processes, laws and policies, including in areas which remain formally of federal competence” (Commission of the European Communities 04.04.2002: 5). The three constitutions are furthermore not harmonized, compatibility has thus to be achieved firstly within the country and only then with European standards (Commission of the European Communities 04.04.2002: 6). Whereas there is a credible commitment to reform from the new government, the reality is more complex and progress hardly conceivable with regard to the political situation. Legislative provisions in terms of human rights and enforcement of the rule of law exist but implementation remains weak. ICTY cooperation is still perceived as insufficient, whereas regional cooperation is progressing steadily. There is also development with regard to minority protection, even though the number of refugees remains high. But here again, even though the decision of the last government cast long shadows on the solution. The new government is perceived as having demonstrated a high level of commitment to change (Commission of the European Communities 04.04.2002: 15).

The analysis of the 2002 progress report points towards cautious optimism, with now 17 items monitored. Progress with regard to the previous assessment is found on 10 items, non-fulfillment declines from 16 to 7 in 2002. Indicator III's wording exempts the republic of Serbia from even mentioning the option of establishing bilateral contractual relations. It rather comments on the speed of reform in Montenegro, where the Commission defines the process of transition as slow expressing disappointment that more progress had been expected (cf. Commission of the European Communities 04.04.2002: 20). A qualitative leap in fulfilling the Council's requirements is still hampered by the over-complex constitutional architecture and the divergent reform paths of Serbia and Montenegro, a fact that – regardless of the Commission's consistent assessment of progress – impedes contractual relations with the federal level by the very definition of the agreements offered.

In its second annual report reviewing progress under the SAP, the Commission is reporting on two major events during the monitoring period 2002-2003: firstly, the implementation of the Belgrade agreement that reformed the constitutional provisions of the new State Union of Serbia & Montenegro and secondly, the assassination of Serbian Prime Minister Djindjic. Whereas the latter event is proof that old legacies of the countries younger past are not yet fully beaten, the first is yet another reminder that the democratic reform process continues to be hampered despite progress made in a number of areas. What is sought to be needed is a "qualitative leap" forward (Commission of the European Communities 26.03.2003). The Commission's report however corroborates the Union's will to support democratic forces in the country but is, likewise, clear in stating that a strong EU will cannot "substitute for a lack of political will within the state" (Commission of the European Communities 26.03.2003: 34): In light of domestic changes to increase capabilities to actually meet the EU's requirements, the Commission's wording shifts to problematizing the political will.

The country specific assessment fine grains these considerations: Globally, the country is found to have moved forward, notably with regard to having a viable and transparent constitutional provision. At the same time, this very progress shows that unresolved status questions in the State Union are still open constitutional questions. Montenegro generally refuses to accept a federal level at all. Reform speed thus varies across the country, administrative capacity is weak. Two days after the assassination of Prime Minister Djindjic, FRY signed the Belgrade Agreement on 14 March 2002 and passed it in February 2003, renaming the FRY to State Union of Serbia & Montenegro and envisaging new and efficient state institutions. The report thus finds that the speed of reform slowed down although it

welcome the constitutional charter as a major step towards building strong institutions on the federal level. Implementation of the agreement is however pending (the report is presented only a month after the adoption); a major hurdle is that Montenegro, in many regards, does not acknowledge the federal level. The Commission reiterates its demand for constitutional security as the political and legal harmonization between the different levels remains an open issue. Laws or legal provisions of the federal level are only implemented in Serbia but not in Montenegro, and also not in all cases but those perceived as suitable (Commission of the European Communities 26.03.2003: 3). Overall, the new constitution clarifies overlapping provisions on federal level, the State Union however is not providing an answer to the divergent reform paths pursued within the two republics. So despite the Commission's finding that legal provisions are in line with international standards, enforcement remains problematic due to varying enforcement capacities on the ground. Regarding the set of special conditions, ICTY cooperation is repeatedly found to be not sufficient.

For the first time since 1997, indicator II identifies a first but single item found to be fulfilled by the country: in 2003, the State Union of Serbia-Montenegro pursues a stability-oriented macro-economic policy. The number of items monitored increased to 19 out of 22, areas of progress increased from 10 to 12, non-fulfillment dropped from seven to six items. These results may not reflect the globally identified positive trend. They rather illustrate the most fundamental character of reform that is considerably away from simply adopting appropriate legislation. Indicator III's wording is addressing more openly the issue of contractual relation:

“Some progress has been made, with much still to be done, and not yet the qualitative leap forward required if the state of Serbia and Montenegro is to reap the full benefits of Stabilisation and Association” (Commission of the European Communities 26.03.2003: 33).

Again, this assessment is consistent with having identified a major constitutional reform such as the Belgrade Agreement but still leaves open the structural mismatch between the new constitutional architecture and the divergent reform paths.

The Commission's third SAP report of 2004 finds evidence of a continuing reform process. Even though fundamental challenges remain: the new constitutional charter has been adopted, but implementation is lacking. This process is also subject to ongoing discussions on the State Unions' constitutional setup that is found to hamper a strict reform agenda (Commission of the European Communities 30.03.2004: 36-37).

The detailed country assessment is mainly occupied with reviewing in how far the new constitutional provisions adopted in March 2004 have been implemented so far. It finds that

constitutional and legal questions are still on the agenda against the general lack of clarity in the authorities' competencies on the level of the State Union and within the two republics. Within the monitoring period, the federal parliament, for instance, has been busy with passing legal acts on its very functioning or international agreements, it has, however, no budgetary competencies and thus hinges on the cooperation between the two republics. Their parliaments have in turn been subject of ongoing crisis, following an opposition boycott in Montenegro and severe disrespect of the rule of law in the Serbian counterpart (Commission of the European Communities XXX: 2-4). The parliamentary crisis led to a delay in adopting new legislation, particularly with regard to economic reform. The report states that after reform had started in 2000, 2003 saw a slow-down if not stagnation of the process (Commission of the European Communities XXX: 29-31). The evolution of regional cooperation and the extension of bilateral free trade agreements also revealed the downside of the new constitutional provisions: the State Union ratified the respective agreements considerably later than the contracting counterpart due to ongoing dispute over treaty provisions between Montenegro and Serbia that would either lead to technical modification or continuous discussions over sensitive issues. The report states that processes like these might ultimately undermine the State Union's political and economic willingness with regard to its international obligations (Commission of the European Communities XXX: 22). Once again, the Commission's assessment is clear in holding that the functioning of the countries democratic principles are far away from normality: the new constitutional charta foresees only five resorts on the federal level that generally lack resources and vary significantly with regard to means for effective functioning. The only reason for cautious optimism lies in the fact that the declaration of the state of emergency declared after the Djindjic assassination did not cause serious instability in Serbia, illustrating the overall fragility in 2005 (Commission of the European Communities XXX: 11-12).

The analysis of the progress reports reveals once more a downward trend in fulfilling the Council's requirements: the number of items monitored drops from 19 to 17 among which 13 items are found not to be fulfilled at all the trend towards progress of the previous monitoring period consequently reverses. What is again clear from indicator II is the manifestation of a structural mismatch of constitutional architecture on the one hand and the strategy to reward only fully sovereign countries on the other. Indicator III or the Commission's recommendation with regard to establishing bilateral contractual relations does however not reflect the aforementioned assessment:

“Progress in Serbia and Montenegro since the last annual Report has been mixed. (...) The Feasibility Report was postponed in order to give the authorities more time to address the remaining key issues, including in particular political conditionality, constitutional issues and the Action Plan” (Commission of the European Communities 30.03.2004: 36).

In light of the 2004 report, a feasibility study is postponed that had been initiated on the basis of the 2003 report. The work on the feasibility of signing an SAA is clearly not consistent with the Commission’s earlier assessments, especially since the report states that cooperation with the ICTY is not respected as foreseen in the countries international obligations (cf. Commission of the European Communities XXX).

6.4.3 Pre-Accession

As of 2005, the reporting technique of the Commission further adjusts to developments on the two republics grounds: Against the background of Montenegro’s indication to hold a referendum right after the period prescribed in the constitutional charter has expired, the report finds that the constitutional and legal certainty within the State Union continues to be under stress (Commission of the European Communities 09.11.2005: 9). Notably, with regard to the economic performance, the report presents individual assessments for both Serbia and Montenegro respectively (Commission of the European Communities 09.11.2005: 27-31; 31-36). In assessing the country's performance with regard to democratic principles and their effective functioning however, the assessment firstly covers the State Union level and only then the two republics (Commission of the European Communities 09.11.2005: 8-17). The SAP report for 2005 is even clearer about the constitutional impasse:

“No actual progress has taken place as regards the revision of the Constitutions of the two republics” (Commission of the European Communities 09.11.2005: 22).

Moreover, the SAP report contains an explicit link to the countries constitutional future with regard to the likelihood of a referendum on independence:

“Constitutional issues in Serbia and Montenegro, notably with respect to the relationship between its two constituent Republics and the functioning of the institutions of the State Union, should be addressed in a constructive spirit and in full respect of the Constitutional Charter of Serbia and Montenegro. This applies also to a possible referendum on independence of either Republic” (Commission of the European Communities 09.11.2005: 22).

In reviewing the domestic performance for both republics individually, the Commission's assessment is somewhat ahead of things. Despite the internal structure of the monitoring

report, the constitutional obstacles are not reflected in the report's outline that rather sticks to the uniform structure of the Commission's progress reports. The Commission's recommendation echoes the analysis of the progress reports: the country is found to have a political situation and a state of democracy that is nothing but "precarious" (Commission of the European Communities 09.11.2005: 23). In numbers, the Commission monitored an identical number of items than in the previous observation period. Non-fulfillment dropped significantly from 13 to three, while progress in meeting requirements was now measured in 13 instead of three. Most significantly, the Commission attested "significant progress" in cooperating fully and constructively with the ICTY (Commission of the European Communities 09.11.2005: 9). It is thus fair to say that this suggests an upward trend without improving constitutional foundations to the better as the constitutional impasse remains in place. However, the very same report contains an envisaged upgrading of relations:

"The Commission recommended this year that the EU open SAA negotiations with Serbia and Montenegro, and with Bosnia and Herzegovina. Depending on their progress in making political, economic and institutional reforms, it should be possible to conclude these SAA negotiations within a year of opening. Albania has made sufficient overall progress in the reform areas essential for implementation of its future SAA; this paves the way for the conclusion of negotiations" (Commission of the European Communities 09.11.2005: 12).

Indicator II and III are consequently not consistent with each other. Earlier assessments clearly named the domestic status quo of divergent reform paths in the State Union and the long list of implementation or law enforcement problems. Arguing that negotiations could be concluded within a year undermines these assessments. Interestingly, this envisaged upgrading of relations comes simultaneously for BiH – the second laggard in the region whose performance on indicator II is way behind neighboring countries, just like Serbia & Montenegro.

6.5 Serbia

In 2006, Serbia fulfills the very first condition out of the set of Council requirements, namely the requirement of establishing and maintaining cooperation with neighboring states as well as within the region. The overall political landscape in Serbia is, however, still found to be sailing in troubled waters: the recent observation period from 1 October 2005 to 30 September 2006 saw a major constitutional development: the end of the State Union of Serbia & Montenegro following Montenegro's successful referendum of independence, held in May

2006. The proclamation of independence followed on 3 June 2006 and was recognized by Serbia only days later on 15 June 2006. This development ends the Commission's repeated considerations of the constitutional setup of the former constitutional arrangement and now deals with Serbia and Montenegro individually. The report notes that "the resolution of issues between the two republics has been proceeding smoothly" (Commission of the European Communities 08.11.2006: 6). The most important development with regard to Serbia's performance as an independent state was the adoption of a new constitution replacing the existing one that dated back in the Milosevic era. Most of the new provisions still await their implementation, although the report is clear in acknowledging "some progress" against the persistence of a lack of coordination within the government, the lack of specialized staff in parliament and the unsatisfactory level of efficiency within the administration (Commission of the European Communities 08.11.2006: 6-10).

Despite these developments, there still are areas of non-compliance, areas within which the Commission does not report a sufficient level of compliance: throughout the observation period, there was no progress in arresting the fugitives awaiting trial at the ICTY (Commission of the European Communities 08.11.2006: 15-16). Legislation allowing minorities the establishment of institutions still awaits adoption (Commission of the European Communities 08.11.2006: 11-12), there are also at the same time cases of ill-treatment and torture reported from Serbian prisons and finally, the freedom of expression is still hampered by insufficient transparency (Commission of the European Communities 08.11.2006: 13). Overall, the first progress report monitoring the situation in Serbia explicitly mentions 16 items, compliance with the Council's conditions in one case, non-compliance in four and progress in 11 areas. Indicator II thus sees a manifestation of the positive trend towards growing fulfillment of conditions. Most striking is the overcoming of the constitutional setup that rendered the conclusion of bilateral relations almost impossible. Indicator III reflects on the state of play in negotiating the SAA and finds Serbia's position auguring well in order to catch up with neighboring countries (Commission of the European Communities 08.11.2006: 14). Recent developments thus do not belie the early offering of negotiations even though the list of requirements is by far not fulfilled in 2006.

The 2007 report for Serbia is the second after the adoption of a new constitution. As a number of provisions awaited implementation throughout the last monitoring period, the one for 2007

covers the time span from 1 October 2006 to early October 2007. With the constitution having entered into force in November 2006, the present report allows judgments on the overall alignment with European standards. As regards the requirements concerning democracy and the rule of law, the report states that some provisions contained in the new constitution “are not fully in line with European standards“ (Commission of the European Communities 06.11.2007: 6). The general election held in January 2007 were followed by a five months period of political uncertainty restricting the work of the parliament and thus achieving only little progress in adopting legislation (Commission of the European Communities 06.11.2007: 7). Overall, the Commission finds in a great number of areas that while provisions are put in place, proper and efficient implementation seems to be a major challenge: the on-the-ground situation with regard to cases of torture and ill-treatment in Serbian prisons is an illustrative example: while constitutional provisions explicitly prohibit torture and ill-treatment, the report raises doubts about proper judicial prosecution of cases of alleged ill-treatment (Commission of the European Communities 06.11.2007: 12). There are also two areas where earlier legislation has not been revised according to European standards: one is the election law (Commission of the European Communities 06.11.2007: 7) and second those provisions that provide for adequate protection of refugees and the return of those internally displaced (Commission of the European Communities 06.11.2007: 14-16).

Serbia’s major step forward throughout the observation period undoubtedly is the Commission’s opinion on progress in cooperating with the ICTY. Attesting progress however does not automatically mean that the requirement of cooperation is fully achieved:

“In spite of the early positive achievements by the government, Serbia has not yet achieved full cooperation with the ICTY. Four ICTY indictees are still at large” (Commission of the European Communities 06.11.2007: 17).

This nexus on the fugitives leaves no doubt that from the Commission’s perspective, full cooperation means that Serbia fulfilled its obligation to send over those indictees that are believed to hide on Serbian territory. In total, the Commission’s report for Serbia monitors 19 out of 22 conditions, finds two to be fulfilled, progress in fourteen and non-compliance in three. Compared to the previous observation period, it is difficult to attest an intensified trend or major leap regarding the number of items monitored. However, Serbia seems to have entered a phase of consolidation where progress is in fact underway but meets domestic conditions that partly continue to hamper fulfilling the entire set of requirements. Indicator III is consistently reflecting this:

“Serbia has shown that it has the administrative capacity to make substantial progress towards realising its European perspective...However, to sign the SAA, Serbia still has to achieve full cooperation with the ICTY. The region as a whole needs to move forward in building modern democracies and developing a political culture of dialogue and tolerance” (Commission of the European Communities 06.11.2007: 17).

The promising the positive trend in improving ICTY cooperation, the more strictly the Commission’s recommendation how to proceed further in repeating once again, that conditions are not yet fully met.

6.6 Montenegro

The 2006 report for Montenegro is the first after the dissolution of the State Union of Serbia & Montenegro. The report thus describes the details of Montenegro’s first steps as independent country. The Commission’s overall assessment is particularly positive with regard to the smooth transition phase preceding the referendum on independence in May 2006. The positive tone that had dominated earlier reports during the State Union is reinforced by finding that Montenegro performs in line with EU requirements with regard to fulfilling its Dayton obligations and cooperation with the ICTY – items that had presented major burdens for the former State Union. Regarding special conditions, the newly independent country reached a level in line with the standards set by the EU. Democratic institutions however are not yet found to be fully aligned: Preparations for adopting a new constitution are underway; meanwhile, the appropriate former State Union legislation applies. The Commission however raises doubt about the legal certainty, as the formula adopted

“...does not provide an unequivocal response to the question on the applicable legislation in the country“(Commission of the European Communities 08.11.2006: 6).

The overall political context casts a shadow on efficient and transparent action of state institutions: Dealing with the referendum kept both government and parliament alike occupied throughout the observation period. The outcome, however, saw new political rivalries between those in favor of independence and the opposition parties in support of preserving the State Union. As a result, the latter abstained from all parliamentary action leading to independence (Commission of the European Communities 08.11.2006: 7). The report expresses general concern on the parliaments’ efficiency under the impression of a lack of political consensus on major issues, such as the legislation on minorities that would be

passed after two years of deliberations on the eve of the referendum (Commission of the European Communities 08.11.2006: 7). With regard to public administration as well as an efficient and independent judiciary, Montenegro did not play up to the required level of compliance: both suffer of serious weaknesses and need to be brought to a level in line with European standards. The judicial system also lacks public confidence and is subject of political interference (Commission of the European Communities 08.11.2006: 10).

As concerns ill-treatment and torture, the Commission quotes a report based on a visit to Montenegrin institutions back in 2004, finding that the risk of ill-treatment when imprisoned is significant. The general conditions in state prisons suffer from a severe shortage of staff as well as poor material conditions. Access to justice is neither guaranteed through free legal aid legislation that has not been adopted (Commission of the European Communities 08.11.2006: 12). The media sector tends to be subject of political interference rendering the results on the respective legislation mixed (Commission of the European Communities 08.11.2006: 13). With regard to minority rights, the Commission finds a mismatch between proper legislation adopted and only limited progress on the ground: even though the country considers itself a multiethnic one, there is an ongoing political dispute over adequate minority legislation (Commission of the European Communities 08.11.2006: 15).

The country's economic development has been marked by a macroeconomic policy mix that is found to be not completely adequate (Commission of the European Communities 08.11.2006: 19) even though macroeconomic stability has been broadly maintained during the observation period (Commission of the European Communities 08.11.2006: 21).

Overall, the Commission explicitly mentioned 18 out of 22 Council requirements, five of which were found to be fulfilled, four were not. The Commission identified progress in another nine areas for the 2006 report. Compared to its Northern neighbor, Montenegro thus performs considerably better. Indicator III reinforces negotiation underway and foresees the conclusion of negotiations for the coming months (Commission of the European Communities 08.11.2006: 13). This statement is consistent with earlier findings that attested Montenegro a better stance in meeting requirements than Serbia.

6.6.1 Discussion: Indicator II and III for FRY/S&M / Serbia/ Montenegro

The figure below maps the Commission's assessments over time for no less than four different entities. The first four reports assessed compliance with the Council's requirements for FRY: from 2003 throughout 2005 it was the State Union of Serbia & Montenegro and the last three graphs map developments individually for Serbia and Montenegro respectively. Globally, the table shows that areas of non-compliance decreased in number in the over time-comparison. Likewise, the areas of partial compliance increased over time. Out of the set of 22 conditions containing both special and general ones, Montenegro's assessment for 2006 offers the top score of fulfilling five requirements. Regarding the special condition of ICTY cooperation the Commission did not find major problems, it rather assessed the newly independent country's cooperation with the ICTY as "currently satisfactory" (Commission of the European Communities 08.11.2006: 16).

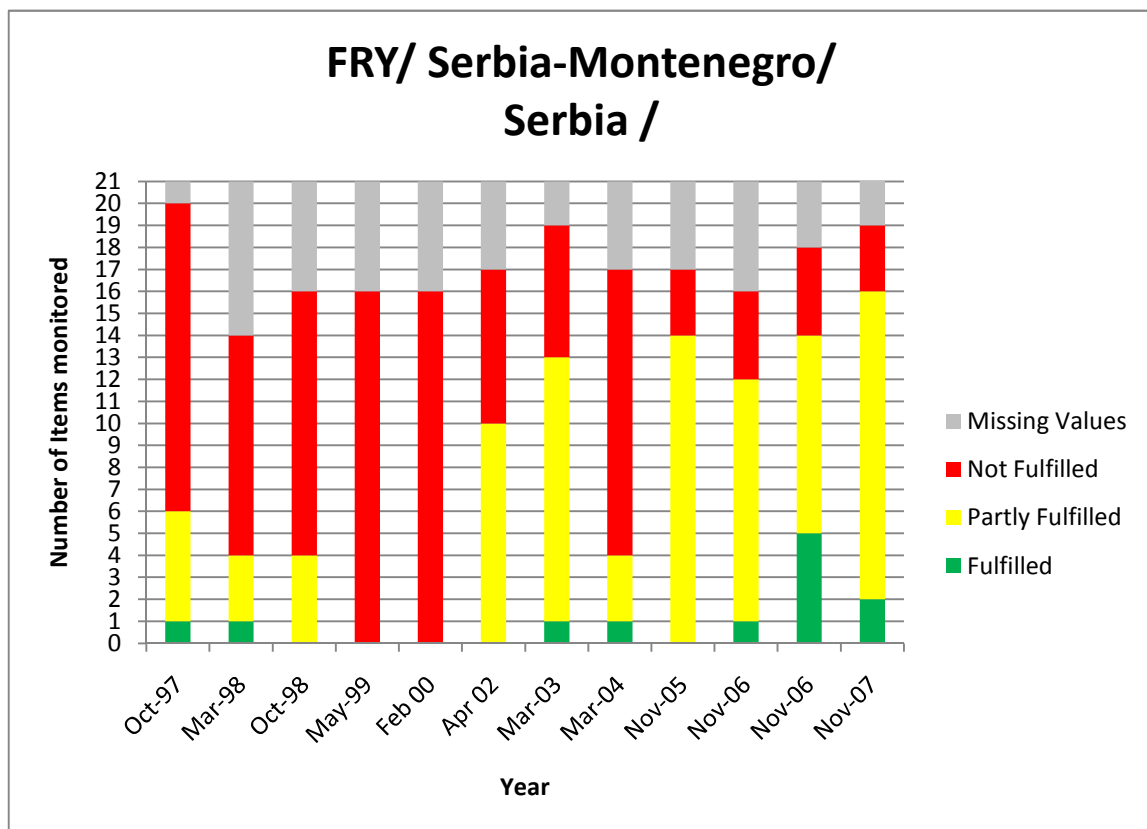


Figure 6.4: Indicator II for Serbia and Montenegro

Serbia does not exceed fulfillment in more than two issue areas. Cooperation with the ICTY is at best found to be „progressing” along with the remark that full compliance is not yet there (Commission of the European Communities 06.11.2007: 17).

In terms of variation with regard to indicator II results have to be carefully measured taking into account the up's and down's in the country's effort to establish a lasting constitutional architecture that would enhance reform efforts. Indicator II and III saw the greatest inconsistency in 2005: although the analysis of the progress reports revealed not only non-fulfillment for most items, the State Union would not have been eligible for contractual relations in the first place, given that both republics had embarked on different routes. Upon the Montenegrin declaration of independence, this inconsistency was literally made up for, as domestic conditions played up to earlier expectations.

However, similar to BiH, the Commission envisages the prompt conclusion of the SAA at a time where it does not see the special conditions fulfilled. Reasoning thus points to an inconsistent application of conditionality even under the assumption of fulfillment as a dynamic process. If even special conditions are not fulfilled in the Commission's very own perspective, conditionality is not consistently applied.

What correlates with this finding is the continuing search for a constitutional status quo: it took roughly nine years after the Dayton to actually appreciate a trend that's been visible in the Commission's reports as early as 1996: the divergent reform paths of both Serbia and its Southern neighbor, Montenegro. It has only been in 2006 that the former republics could be treated individually. From there, it took merely about one year in the Montenegrin case to conclude an SAA. The case of FRY of the State Union illustrates an inherent dilemma of the EU's policy approach: offering bilateral contractual relations to countries that meet EU requirements rests on the assumption of settled statehood. Similar to the two federations in BiH, FRY presents yet another case where the rewarding end proves inconsistent once unresolved status issues lay on the table. If statehood is not settled – like in the example under investigation here – the monitoring efforts practically undermine conditionality: if there is nothing to offer on the rewarding end, conditionality turns into a lame duck. Upon its resolution, statehood then ranges higher than items on the list of requirements. The fact that after years of dispute statehood was finally settled and the two republics embarked as independent states sufficed to almost immediately come to terms with concluding contractual relations – regardless of earlier assessments through monitoring that revealed nothing less than overall non-fulfillment of conditions.

6.7 Bosnia and Herzegovina

6.7.1 Regional Approach

Like Croatia, Serbia and Montenegro, the federation of BiH is a signatory to the Dayton Framework Agreement of Peace (DFA) of late November 1995. Against the background of severe damages to the countries' infrastructure and an ethnically divided country, the DFA presents constitution-like provisions to allow for post-war stability. Domestic conditions throughout the two entities Republika Srpska (RS) and the federation Bosnia-Herzegovina (FBiH) thus poses the most challenging case to meeting EU requirements: in the absence of a constitution comforting post-war realities, the Dayton provisions had been explicitly designed to account for divergent ethnic majorities in different parts of the country²⁴. What is more, the installation of a High Representative equipped with the so-called Bonn powers offered the legal possibility of direct interference once the ten cantons, the two federations or the nation state of BiH would not stick to its obligations arising out of the DFA. The countries constitutional architecture as of 1995 has thus been most complex and presents a unique case in the Western Balkans.

Despite the country's constitutional and ethnic uniqueness, BiH was grouped under the umbrella of the Councils Conclusion of 29 April 1997, presenting specific and general conditions prior the conclusion of contractual relations similar to the ones Croatia and FRY faced. The Commission's efforts monitoring the country's fulfillment of conditions focuses on the DFA's "rules of the road". In 1997, it finds that "both entities are failing to comply" with these: Progress, if any, is found to be frustratingly slow and always needed constant international pressure (European Commission Directorate General IA 03.10.1997: 5). Despite "some limited progress", there is not yet "any fundamental change of political climate or commitment to pursue such a change" (European Commission Directorate General IA 03.10.1997: 3). What is more, cooperation with the ICTY is "completely unsatisfactory" (European Commission Directorate General IA 03.10.1997: 5). The special conditions for BiH, notably the Dayton provisions, take more room in the Commission's assessment than the general ones thus showing that in the most basic preconditions for actually complying with the EU's requirements are non-existing. In total, out of the countries' 22 items of verifiable

²⁴ The constitutional arrangements strive to balance the country's ethnic post-war composition not only in cantons and the federations, but also within the federal three-man presidency composed of a Muslim Bosniac, a Catholic Croat and an Orthodox Serb.

elements, 17 are explicitly mentioned, 15 are found to be not fulfilled, whereas two are at least partly fulfilled. Reasons for non-fulfillment articulate that none of the three entities is “wholeheartedly” committed to “democratic co-existence with the others” The presence of the Office of the High Representative (OHR), a UN mission, international military and police forces as well as a number of other international organisms “all help to press governments and public authorities to act constitutionally” (European Commission Directorate General IA 03.10.1997: 3). Beyond finding that political loyalties of political leaders are somewhat bound to pre-existing ethnic coalitions and not necessarily to the electorate, the Commission herself is critical about how well the Dayton provisions match with EU requirements. The claim for central institutions illustrates this point: whereas the Dayton provisions do provide for a democratic and accountable state, central institutions barely exist in 1997. Monitoring the Council’s list of requirements thus ignores the fact that pre-conditions, such as central institutions, do not exist rendering fulfillment something to wish for. It is thus consistent that almost two years after Dayton, the frustratingly slow speed in implementing the Dayton provisions causes the Commission to not even mention the option of contractual relations (European Commission Directorate General IA 03.10.1997: 5).

Six months later, in spring 1998, the second report on conditionality neither expresses encouraging signs of optimism with regard to the post-Dayton political landscape in BiH. While the Commission states a continuing “reluctance on the part of some parties to fulfill the requirements of the General Framework Agreement”, recent developments in RS in the beginning of 1998 show first positive signs (European Commission Directorate General IA 30.03.1998: 2). The diverging developments pose yet another challenge to monitor the Council’s requirements consistently (indicator II). Ethnic ties to neighboring countries remain a source of concern, not only with regard to enhancing regional cooperation, but also with regard to facilitating a safe return for refugees to minority areas.

As for early 1998, there is not yet any compliance with the conditions set by the Council in the previous year. Given the uniqueness of the political landscape, the Commission’s assessment of implementing the Dayton provision is stricter than in the first conditionality report, as it explicitly and exhaustively states eleven priorities along with a deadline for implementation. This list identifies specific areas and calls for implementation “as soon as possible” or “without delay” or by presenting a date in the near future. Interestingly, the items cover obligations of the federal level as well as both federations where compliance varies with

regard to specific issue areas. Cooperation with the ICTY is found to have improved by the surrender of seven persons in early 1998 but there is the urgent need for further steps as a large number of indictees continue to live in both federations (European Commission Directorate General IA 30.03.1998: 5). In presenting these priorities along with setting a deadline, the Commission is specific in also allowing measurability of efforts taken. It thus fine-grains the condition for full cooperation with the ICTY in helping authorities to define and meet concrete steps on the three state levels. The introduction of “package conditionality” presents a deviation of the envisaged application of conditionality. The novel practice is undoubtedly rooted in the domestic status quo and literally adds sub-conditions to the original set of Council requirements. With regard to recommending the next steps towards the eventual conclusion of contractual relations, the Commission simply states “that the time has not yet come” (Commission of the European Communities 15.04.1998: 2).

Roughly six months later, the compliance record is almost the same than before: the overall democratic development is “marked by slow progress...and lack of an active commitment by authorities as a whole to fulfilling the requirements of the General Framework Agreement” (European Commission Directorate General IA 19.10.1998: 2). Given that it has been either the presence of the international community or the direct interference of the High Representative, who brought about positive developments, the Commission finds it regrettable that the country

“...is still heavily reliant on the international community in the absence of a government structure that is ready to take full responsibility for the country and its future” (European Commission Directorate General IA 19.10.1998: 2).

Against this statement, the report recalls latest developments such as safe return for those seeking to live in minority areas. In short, the report finds that it has been “virtually impossible to ensure sufficient protection of minorities” since “there is no political will to promote minority return on a significant scale and thus, in upholding minority rights” (European Commission Directorate General IA 19.10.1998: 4).

It becomes evident that BiH still struggles with the most basic requirements of implementing the peace agreements’ provisions. None of the items – specific or general – is found to be fulfilled in autumn 1998. The wording of the Commission’s recommendation is again consistent with the monitoring efforts as it is “too early” to negotiate any agreement.

The political landscape in early summer 1999 is at the brink of risking progress made due to internal as well as external events that impact on both the entities and the federal state level. As yet another novelty, the Commission's monitoring report separately deals with both entities: In RS, the situation is described as unstable and unpredictable following the High Representatives dismissal of the entity's President. In an overall climate of increased tensions due to the NATO air strikes against FRY, the political landscape is found to be divided into nationalists and moderates. In the BiH Federation, Bosnian Croats boycotted common institutions on federal as well as entity level for seven days, following the killing of the Deputy Interior Minister. This event is yet another example of ethnically motivated action that runs counter to the idea of functioning common institutions within a unified state, as provided for in the Dayton Agreements. The Commission finds that,

“These events have practically brought to a standstill the work of the joint bodies of BiH and risk jeopardizing all the progress that had been achieved up to now” (European Commission Directorate General IA 17.05.1999: 3).

Given that none of the conditions is found to be fulfilled in 1999, the Commission's recommendation repeatedly turns down any aspirations of bilateral agreements in 1999 sticking to a consistent application of conditionality: negotiations could not be opened before “relevant conditions” had been met, postponing the matter “to the appropriate time” (Commission of the European Communities 26.05.1999: 9). The monitoring results for the consecutive period ranging from mid-April 1999 to mid-January 2000 take stock of an improved domestic situation. The report, nevertheless, reaffirms the overall unclearness of the political situation in both entities that renders progress made “unsatisfactory” (European Commission Directorate General External Relations 09.02.2000: 2). The Commission also claims a causal link between progress made, especially with the adoption of legislation and pressure from the international community or direct interference of the HR. The latter is a result of missed deadlines, a low level of political will or open deadlocks in the respective parliamentary or executive bodies. One prominent example is the three-man presidency of BiH, representing the three major ethnic groups: even though the atmosphere and working conditions have improved, they have no common secretariat and basically work alongside each other drawing on their own cabinet, protocol or archive system rendering true common action a desire. (cf. European Commission Directorate General External Relations 09.02.2000: 2). Overall, the analysis for the 2000 report shows is similar to earlier reports in commenting only 12 out of 22 items explicitly. It sees one condition fulfilled – the framework

allowing for a competitive banking sector – progress in six and non-compliance in five. In its recommendations, the Commission delivers no perspective of an agreement any time soon:

“Due to the general political uncertainty and the institutional deficiencies, a Stabilisation and Association Agreement, or the conduct of a feasibility study to this end, cannot be envisaged at this stage” (Commission of the European Communities 02.03.2000: 4).

6.7.2 Stabilization and Association Process

Upon the presentation of the successor policy, the next report on compliance with conditions is not presented earlier than roughly two years later in April 2002. The first SAP report states that BiH has fallen behind the developments of its neighbors as it is not yet a self-sustaining state based on the rule of law (Commission of the European Communities 04.04.2002: 17). A number of inter-related challenges persist due to the complicated constitutional provisions, even though a start has been made in implementing them:

“This state has no country-wide system administration, no army and an at best embryonic judicial system. Moreover, limited formal powers are matched by a very limited ability to raise revenue - the BiH State must rely mainly on Entity contributions” (Commission of the European Communities 04.04.2002: 4).

The overarching characteristic of the situation in BiH is an interim institution in the form of the Dayton Agreements that highly decentralizes the country. Whereas the two entities have extensive powers, the common state institutions only have limited ones that are executed against the background of an ethnically highly polarized political climate. The Council’s condition, however, draws on the capacity of the country to conclude and implement bilateral contractual relations on the federal level and thus on a level whose capacities are barely existent. The highly critical assessment is echoed in the Commission’s operational conclusions demanding progress in terms of self-sustainability as “precondition for negotiating any agreement” (Commission of the European Communities 04.04.2002: 18). This finding presents nothing less than a benchmark for the country's efforts in meeting EU requirements. Self-sustainability is not contained in the Council’s list of requirements but de facto presents a *conditio sine qua non* to meet the objectives in the first place. Ongoing debates within the country, whether the Dayton agreement should be re-opened add further salience to the question of self-sustainability.

A year later, the country is found to have undertaken steps towards self-sustainability respecting Dayton provisions, by and large, even though any progress is found to be too slow

to keep up with neighboring countries (cf. Commission of the European Communities 26.03.2003). The 2003 SAP report leaves however no doubt that the country is still away from fulfilling the most basic requirements of all:

“Irrespective of any ambition to accede to the European Union, BiH needs to become a self-sustaining state” (Commission of the European Communities 26.03.2003: 28).

Contrary to earlier reports and despite not being a self-sustaining state, the Commission finds that the 18 items of the “package conditionality” introduced in 2002 are substantially completed. Based on its finding of a completed road map, the Commission holds that the conduct of a feasibility study would be the next step. Indicator III thus signals that the conclusion of an agreement is now within reach (Commission of the European Communities 26.03.2003: 28-29). To repeat, it is not the catalogue of the Council’s requirements that is found to be fulfilled but rather the sub-conditions introduced against the background of the domestic status quo. In envisaging the country’s conclusion of an agreement, the actual list of requirements is watered down.

With regard to a consistent application, questions occur against recent developments being commented on in the very same report: The most important development in moving from a post-war to an agenda of transformation has been a constitutional court ruling of the “constituent people case” providing that every ethnic group is represented on all levels of the state and within the administration and judiciary. The parliaments of both entities adopted the provisions, though not without pressure from the HR’s office. This constitutional court ruling clearly is a case of compliance with one item on the road-map. However, the report also states that the overall system of the state becomes even more complicated *after* the constituent people case. As self-sustainability had been at the core, yet another instance of complexity within the system contradicts the earlier wording of a precondition. It rather illustrates the fragility of BiH. The overarching problems prevail regardless of the positive account of complying with the road map: the over complex and over complicated institutional provisions of the Dayton agreement, the lack of self-sustainability and an economy that is aid-dependent and whose weakness would not be able to cope with external shocks (Commission of the European Communities 26.03.2003). The period between spring 2003 and 2004 saw a major development with regard to bilateral relations between the Union and BiH: the completion of a preparatory feasibility study.

The countries third SAP report witnesses a major decline in the number of items monitored. What is more, the overall tone of the Commission's report is shadowed by the finding that progress on the items identified in the feasibility study is limited. The report also expresses a general lack of confidence in the countries capacity and willingness to embark on further reform: the fact that number of steps forward result of interference of the High Representative and are not carried from within state and federation institutions hampers the prospect of sustainable reform (Commission of the European Communities 30.03.2004). In light of the analysis presented earlier, this pessimistic assessment is no surprise; rather, it mirrors the Commission's monitoring that sees at the best two out of 22 items fulfilled. In its recommendation for 2004, the Commission draws on the feasibility study and items identified within that needed reform most urgently. Once again, the Commission introduces sub-conditionality like it did with the road-map. In doing so, it waters down the Councils original set of requirements as for the completed road-map, the Commission declared the process of establishing bilateral contractual to be starting. As consistent this action might be with regard to facilitating impact on the ground, it clearly is inconsistent with a strict application of conditionality in a regional policy approach. The Commission even assesses the dilemma:

„Daher bestehen in zweierlei Hinsicht Bedenken: Erstens hat sich die Hoffnung auf eine neue und klar erkennbare Reformdynamik nicht eindeutig bestätigt, zumal es noch häufig zu politischen Reformblockaden kommt. Zweitens hält sich die "Eigenverantwortung" BiH für die Reform nach wie vor in Grenzen. In den meisten Fällen sind die Fortschritte auf die Initiativen, die Unterstützung und den Druck der internationalen Gemeinschaft zurückzuführen. Es mangelt an eigenem politischen Willen und an Kapazitäten, was sich unweigerlich nachteilig auf die Umsetzung der beschlossenen Reformen auswirkt und keine geeignete Grundlage für ein Stabilisierungs- und Assoziierungsabkommen wäre" (Kommission der Europäischen Gemeinschaften xxx: 10 – Emphasis in original).

What would be needed is overcoming the over-complex institutional provisions of Dayton without opening Pandora's box of ethnic representation, so that self-sustainability against the background of a willing government on all state levels could work on the reform agenda. The above quotation underlines the inconsistency of having assessed the items of the road-map as substantially completed. Although BiH has no contractual relations of any kind, the third SAP report assesses the country's capacities to implement the SAP even though these items go way further than the list of verifiable elements. Overall, the number of items monitored is smallest since 1996. It is only eight out of 22, whereas none of the conditions is found to be fulfilled, there is progress identified in five and non-compliance in three.

"In terms of meeting the technical SAP requirements, the judgment of the Feasibility Study remains valid: ... a pattern of intermittent progress, interspersed with areas where crucial reform

has not been completed, or in some cases even begun (...) As soon as it ascertains that significant progress has been made in meeting the 16 requirements established in the Feasibility Study, the European Commission will decide on a recommendation for a Council decision to open SAA negotiations. Conversely, if progress is insufficient, the Commission will not be in a position to recommend proceeding with such negotiations. Only BiH can ensure success. By successfully addressing the 16 priority points during 2004, BiH would reinforce a dynamic in part established by the Feasibility Study and would create the confidence both at home and abroad that it can address an ever wider and more demanding reform agenda" (Commission of the European Communities 30.03.2004: 35).

In short, the Commission's monitoring practice is double edged: on the one hand, it assesses the country's capacities to implement a SAA and is by all mean pessimistic. On the other hand, the Council's requirements ranged alongside preconditions demanding self-sustainability, watering down the former. The Commission thus pushes and pulls simultaneously – a behavior contradicting the consistent application of conditionality.

6.7.3 Pre-Accession

The observation period between March 2004 and May 2005 is covered in the first report in the series of enlargement strategy country reports, now labeled progress report. Irrespective of the status quo of relations, BiH is now judged by enlargement criteria. The enlargement strategy paper for 2005 reiterates that the Western Balkans are in the waiting line for accession but will be judged on individual merits and compliance with conditions:

"...the EU must remain rigorous in demanding fulfillment of its criteria, but fair in duly rewarding progress" (Commission of the European Communities 09.11.2005: 3).

This statement, however, runs counter to earlier recommendations of the Commission that gave a green light even though criteria were not fulfilled. The country report for BiH recalls the latest reports and a short summary of the countries younger history. Most importantly, the constitutional provisions that govern the country still remain the same since Dayton. They specify "that the country is a democratic state operating under the rule of law with free and democratic elections and provides for a highly decentralized state" as a result of which a large number of governments and related administration govern the interests of the three constituent people, namely Croats, Bosniacs and Serbs:

"From a European integration perspective it is difficult to argue "that the present constitutional order is optimal. The current set up does not support swift decision-making and hampers reform implementation. This undermines Bosnia and Herzegovina's possibilities to make rapid progress in its way towards the EU" (European Commission 09.11.2005: 9f.).

Further reasons for concern are ongoing political deadlocks that are directly linked to the obligations arising out of the peace agreements such as cooperation with the ICTY. BiH's overall compliance is found to be mixed given the varying attitudes towards arresting fugitives within the two entities: during the observation's period, the High Representative announced a series of sanctions aimed mainly at RS as a result of which the entire RS government resigned as a sign of protest. Against the background of diverging national interests, structural weaknesses and inefficient support structures, the country's record in advancing legislation is limited. This is the more true as the High Representative of the international community played a vital role in overcoming deadlocks in deciding or implementing reform, as the Bonn powers allow among other for direct imposition of binding decisions. With regard to human rights protection, the report identifies progress (European Commission 09.11.2005: 19).

The report of November 2005 draws the most optimistic picture in the country's effort to meet EU requirements while 17 out of 21 items are explicitly commented on. However, non-compliance covers such significant topics as the policy-making process or macro-economic stability. Even ICTY cooperation – one of the special conditions – did progress but under constant international pressure. So while the Commission finds considerable progress in some areas, it is also evident that the still-existing “complex constitutional structures lead to blockages and inefficiency in decision-making” Commission of the European Communities 09.11.2005 #513: 8}). But similar to the mismatch between indicator II and III in 2003, the Commission recommends opening negotiations on an SAA foreseeing its conclusion within only one year (Commission of the European Communities 09.11.2005: 12).

Overall, in its sub-chapter on the countries general evaluation, the Commission finds that the country has taken a step forward to consolidate stable institutions guaranteeing basic rights. However, there is not yet full responsibility for the government as self-sustainability still is a concern. The economic sector is yet another prominent example to underline this prevailing concern of self-sustainability: competitiveness has serious shortcomings, market principles are respected only to a limited degree. In short, there is room for cautious optimism that the overall development is not reversing, though shortcomings with regard to European standards remain significant. Regardless of the fact, that the assessment of progress covers the entire range of conditions, from the ones of 1997 under investigation here to the Copenhagen or

accession criteria, I found 17 out of 22 items explicitly mentioned, three of which are found to be fulfilled, whereas in ten there is progress. Four out of 17 items are found to be not fulfilled. The countries overarching problem of a complex institutional architecture remain a matter of concern also in the Commission's subsequent annual report of 2006. As in previous years, the report states that the adequacy of the Dayton constitutional system is repeatedly questioned within the country. It is further acknowledged that however inadequate the current situation might be, it brought peace and stability to the country. The status quo comes at a price though:

„The structures deriving from the DPA are complex and fiscally unsustainable” (Commission of the European Communities 08.11.2006: 6).

Against this background, the report recalls the delay in adopting legislation caused by “complicated decision-making procedures, capacity problems, lack of political will and diverging national interests in Government and Parliament” (Commission of the European Communities 08.11.2006: 8). With regard to question of minority protection, the report finds that the state is not yet based on citizenship but rather on ethnic representation (cf. Commission of the European Communities 08.11.2006: 17).

In the 2006 progress report, again 17 out of 22 items are explicitly mentioned, five of which are found to be fulfilled, the highest number reached throughout 1007 to 2008. Non-compliance is found in yet another five areas. Seven requirements are partly fulfilled. The number of items fulfilled presents an increase of two compared to the previous observation period. The Commission's recommendation, however, does not reflect this trend: it states that although progress continued, its speed has slowed down. And finally: “A number of important issues remain to be tackled before negotiations for a Stabilisation and Association Agreement can be concluded” (Commission of the European Communities 08.11.2006: 28). For the observation period in 2007, the analysis revealed that 18 out of 22 items were explicitly assessed, four of which were found to be fulfilled, seven were not and progress towards compliance was found for seven items on the list of verifiable elements. Whereas the number of fulfilled items dropped by one, non-fulfillment increased by two, illustrating the opposite of a strong positive trend the Commission might have hoped for two years earlier when the allotted time frame for concluding the SAA was meant to be shorter than 12 months. Indicator III or the Commission's assessment, consequently, voices skepticism in 2007:

“In Bosnia-Herzegovina, nationalist rhetoric by key political leaders is challenging the arrangements established by the Dayton/Paris peace agreement and has stalled reforms. Much needed reforms of the police and of the constitutional framework have failed to make progress. Bosnia and Herzegovina has yet to assume full ownership of its governance, which currently necessitates a significant international presence” (Commission of the European Communities 06.11.2007: 5).

This assessment shows that the non-fulfillment of the EU’s respective criteria is not only not yet there, the status quo rather presents obstacles to actually reaching the envisaged level (cf. Commission of the European Communities 06.11.2007: 13). The list of issue areas where the constitutional provisions perpetuate tensions and deadlocks could be expanded from the organization of the judiciary to other the legislative as well as executive bodies of the country, that together with capacity problems, lack of political will and diverging national interests continue to delay compliance with EU requirements (cf. Commission of the European Communities 06.11.2007: 9). A major step forward is, however, the report’s statement on BiH’s cooperation with the ICTY. For the first time since 1996, it is found to have progressed to a “generally satisfactory level” (Commission of the European Communities 06.11.2007: 20). In 2007, none of the democratic principles contained in the Council’s list of conditions is found to be complied with. ICTY cooperation is part of the country’s special conditions. The fact that cooperation had reached a satisfactory level only in 2007 did not prevent the Commission to recommend the opening of negotiations as early as in 2003. This finding is inconsistent with regard to a consistent application of conditionality, as the Commission is clear in naming in its recommendations of 2007:

“Bosnia and Herzegovina has yet to assume full ownership of its governance and needs to move ahead in reforms, in particular of the police” (Commission of the European Communities 06.11.2007: 17).

The shadow on inconsistency grows further during the subsequent observation period: In 2008, the Commission finds that “EU related reforms have stagnated” and that “consensus remains weak on key reform priorities”, rendering the overall assessment even more pessimistic than before (Commission of the European Communities 05.11.2008: 4). Despite this novelty in the Commission’s wording, the country specific report *grosso modo* follows the mood of previous ones: there is an ongoing dispute among political leaders with regard to challenging the constitutional provisions of the peace agreements (cf. Commission of the European Communities 05.11.2008: 7). The status quo of capacity problems, lack of political will and diverging national interests in government and parliament also prevailed throughout

the observation period (Commission of the European Communities 05.11.2008: 10). The Commission's assessment of increased parliamentary activity is not reflected with regard to the number of items fulfilled: Overall, the Commission's 2008 report again explicitly monitors 17 out of 22 items, it finds four to be fulfilled, progress towards compliance in seven and non-compliance in six, repeating more or less the assessments of 2006 and 2007.

6.7.4 Discussion: Indicator II and III for Bosnia and Herzegovina

The above section presented the empirical analysis of country-specific reports for BiH between 1996 and 2008. The figure below displays the results in an over-time comparison:

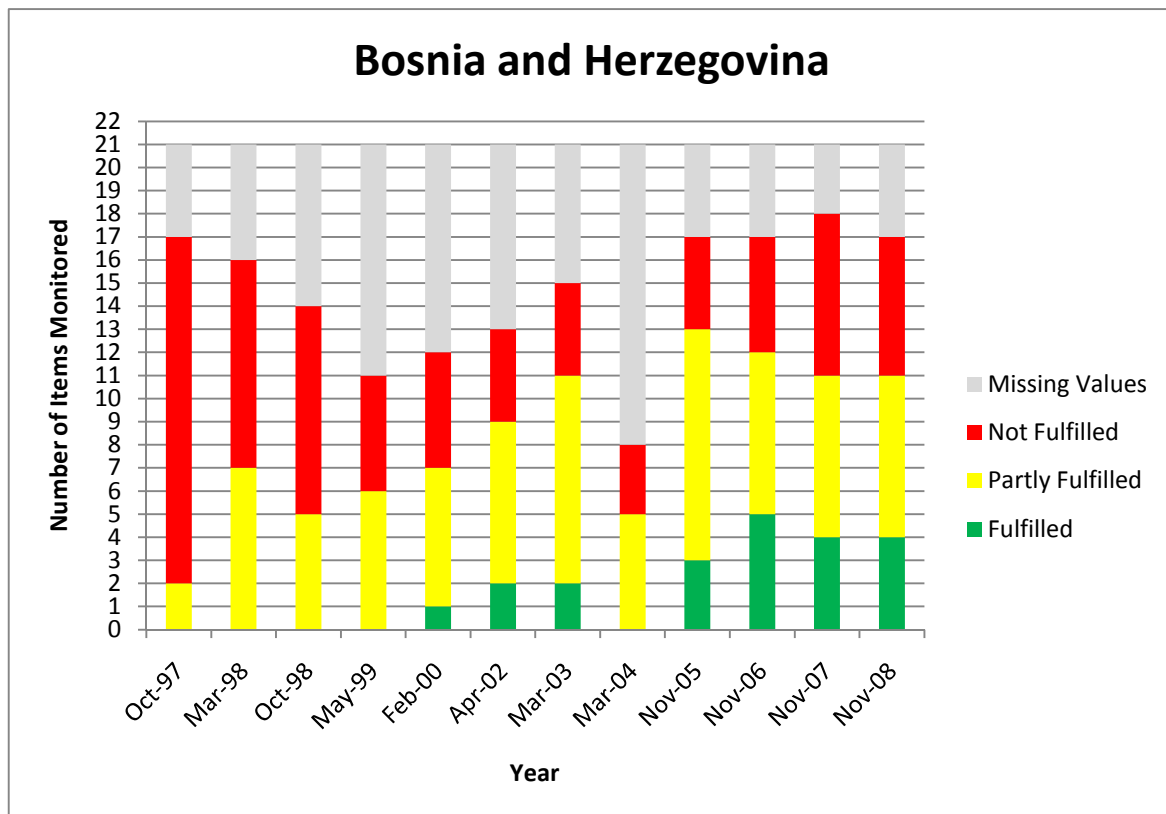


Figure 6.5: Indicator II for BiH

The number of items on the list of verifiable elements improves over time, though on a generally low level of about four out of 22 items. Interestingly, the Commission monitored the special conditions for the country throughout the entire period: as was shown in chapter four, special conditions are set to account for specific domestic conditions, such as being a signatory of the Dayton Peace Agreement. With regard to regional cooperation which is also

of utter importance in the Council's catalogue of conditions, the analysis reveals no compliance over the twelve subsequent years of the Peace Agreement. It does comment on the evolution of relations with neighbors and the country good record in participating in regional initiatives but also its failure of addressing open issues.

The comments on problems arising out of the complex institutional architecture prevail throughout the observation period and the Commission itself is clear in pointing this out as the overarching problem: it is not only hampering effective functioning of the states' institution but rather a sizeable obstacle to it in the first place. The Commission was aware of that in presenting a road map for reform, identifying the most urgent reform areas that were meant to facilitate the country's ability to fulfill the Council's conditions.

If consistently applied, the Commission could only have offered the SAA upon successful fulfillment of conditions. Having introduced the road map, the Commission's recommendation to move relations to a higher level in negotiating an SAA was based on seeing the road map substantially concluded, rather than the initial list. This fact is evident, as the analysis for 2003 neither shows a significant increase in either the number of items monitored nor items fulfilled. By the time indicator III saw the prospect of contractual relations, indicator II monitored a list of country-specific sub-conditions only rather than the Council's list of general and specific conditions. What is also adding to the picture of inconsistent application is the fact that ICTY cooperation was not among the items of the road map. To conclude, there is no doubt about the merits of Dayton in ending violence. Neither can be doubted, that these very provisions render reform processes in BiH behind expectations and well below the threshold of fully complying with the General Affairs Council Conclusions on conditionality of 1997. BiH's outlying position compared to neighboring countries is thus perpetuated rather than reduced throughout 1997 to 2008.

6.8 Mapping Variation for Indicator II and III: across-country Comparison

Chapter six put indicators II and III to an empirical test in analyzing the Commission's progress reports: building on the conceptual framework established earlier, the above section analyzed the progress reports measuring fulfillment, non-fulfillment or partial fulfillment of the Council's list of verifiable elements of conditions (indicator I) elaborated in the previous step. The country-per-country analysis is now compared across-countries, namely in

clarifying whether or not the Commission applied the same standards to its various requirements.

The levels on which to test for consistent application are threefold: Contrary to the expectation of consistent application, I found that the monitoring practice varies over time and within countries. In short: while some requirements are always part of the parcel, such as separation of powers, others are never explicitly mentioned, like the right to privacy, family, home and correspondence. Second, if applied consistently every item would be filled with the same meaning and thus measured against the same standard regardless of the country in question. That is neither the case. The reports structure and content suggest otherwise: the region's most advanced country determines the monitoring efforts, also known as the regatta principle. This practice is consistently applied for all countries across the region but is inconsistent with the reinforcement by reward hypothesis. If the application was to reinforce a country's reform agenda, it is counterproductive to offer the most distant reward to those that lag behind the other's performance. The Commission is thus not applying the same standard therefore acting inconsistently. Third, combining indicators II and III in an across-country-comparison I find that the Commission's recommendation to open negotiations for an SAA comes at a time when fulfillment with the Council's requirements is at best low. This observation is further inconsistent with the strict application of conditionality where the same standards have to be reached in order to move up.

Let me turn towards a closer examination of the three points that argue for an inconsistent rather than consistent application of conditionality: When the Council set the requirements it was mainly because of the argument in favor of a comparable standard within countries seeking close cooperation or eventually membership to the Union. At the same time, the approach was meant to accommodate regional or local disparities in arguing that monitoring efforts would account for heterogeneous domestic conditions. What I found in the analysis of the progress reports fits well into this picture: as the conditions were broken down to verifiable elements, some, like the right to privacy, family, home and correspondence were never explicitly mentioned in any of the reports. I further showed that the entirety of items on the Council's list – be it general or specific conditions – have never been commented on in any of the reports throughout the observation period. The maximum number of items dealt with was 19: for Croatia in both 1998 reports and Albania for both 1998 and the 1999 report. The smallest number of items monitored is eight, for BiH in 2004 and nine, for FYROM in

2000. One might argue that the rigorous analytical framework applied to the reports might simply ignore the Commission's stance on some of the items. That methodological challenge was, however, kept constant over time and across countries. So even if requirements were explicitly commented upon, how can one be sure that, in order to be consistent, they share the same meaning on the domestic grounds? At one point, the Commission is clear in stating that – in the case of BiH – the country had to become a self-sustainable state prior the conclusion of any agreement (Commission of the European Communities 04.04.2002: 17). The Commission's statement that monitoring the domestic status quo "has proved sufficiently flexible to accommodate differing stages of progress" makes clear that it is not the crisp content of the requirements that counts as a benchmark but rather the domestic scenery that adds decisive meaning to the quality of self-sustainability (cf. Commission of the European Communities 04.04.2002: 8). Single items on the list of verifiable elements are thus filled with meaning on the partner country's domestic ground rather than monitoring determinate conditions. The Commission does not test transparent standards but rather describes and comments on a specific domestic status quo and its consequences for any of the verifiable elements. As consistent as this method might be for a single country in an over-time-comparison the more problems does it raise with regard to rewarding similar achievements in a merit based approach: From the country's perspective, similar efforts to overcome a specific status quo might not be worth the same reward than in a neighboring country. The lower the general level of democratic quality, the more warmly applauded are tiny steps such as having mastered local elections without help of external actors. Albania's reports support this most convincingly: even though they leave no doubt about the lack of political maturity in the country, they do assess progress, notably with regard to the quality of democratic institutions and governmental action in line with constitutional provisions cf. (Commission of the European Communities 04.04.2002). But in the same series of reports, FYROM, for example, is addressed with more demanding tasks and a more nuanced report on details.

Contrary to this observation is, however, the change in method regarding indicator II: if monitoring fulfillment would indeed be driven by the domestic status quo, the Commission's monitoring would vary according to the level of bilateral contractual relations already reached. If applied in such a consistent manner, this would corroborate the idea of reinforcement by reward in introducing only the next available rewarding scheme instead of offering the golden carrot also to those that do not maintain any contractual relations at all.

The latter is the case: The conditions under the Commission's scrutiny are determined by the country that is most advanced despite progress in bilateral contractual relations with the others. From the perspective of the EU, the framework within which monitoring is executed changed two times and is identical to all countries and thus consistent in cross-country comparison. On the other hand, this is executed regardless of the level of performance reached within the respective countries and regardless of the existing level of cooperation: BiH's performance, for instance, as one of the countries being last in line to establish contractual relations is measured against the Copenhagen or accession criteria even though it is no official candidate and apparently struggles with even the most basic requirements on the Councils list. This practice – lifting the monitoring of requirements to the highest available level regardless of the status quo of bilateral relations – is consistently applied but belies the Commission's statement that it accommodates different stages of progress. It neither excludes the possibility that those countries performing better in meeting EU requirements are dealt with stricter than in those cases where even self-sustainability is at stake.

The earlier mentioned dilemma of monitoring the fulfillment of requirements against the background of unsettled statehood or divergent reform paths in the constituent parts of the country adds further salience to the question of what is actually subject to the monitoring: BiH with the lowest performance record for indicator II may serve as an example: The focus in BiH over the 2000 reporting period was on implementing the road-map having identified 18 priority areas. As the report states, the road-map presents a “narrower agenda than in more advanced SAP beneficiaries” (European Commission Directorate General External Relations 09.02.2000: 20). The Commission states that,

“The Road Map was “substantially completed” by September 2002. Of course, the Road Map was never a recipe for perfect government or immediate EU accession, but it was an indication of some pressing issues and a measurement of political will to address them. Regrettably, its substantial completion took too long and its full implementation requires continued attention” (Commission of the European Communities 26.03.2003: 28).

This notion contains two interesting observations with regard to progress and rewards: first, progress is significantly lower than in other countries, namely the frontrunner Croatia and FYROM. Second, if a reward then is perceived as too distant, the EU, namely the Commission, introduces an intermediary step that lowers the threshold for the following step. A similar dilemma occurs regarding the State Union prior Montenegro's declaration of independence: as early as 1997 the Commission repeatedly verbalized the divergent reform paths in the two republics. Despite the non-functional federal level with which it would

negotiate any agreement it recommended to open negotiations. In both cases, BiH and the State Union – the Commission ignores the non-fulfillment of special conditions and the non-existence of a self-sustainable state. This observation argues again for a country-specific assessment and the individual merits approached but is totally inconsistent with assessing the entirety of accession criteria at the same time. Adding to the first two observations is the empirical test, whether or not the Commission’s recommendation (indicator III) to open negotiations is based on “sufficient progress” detected. The following figure maps the country’s fulfillment of the Council’s conditions based on the report that preceded the Commission’s recommendation to open negotiations. If conditionality is applied consistently, I would count a high number of conditions fulfilled. Compared across countries, I would further expect the countries to perform the same to support the notion of rewarding compliant behavior. The comparison reveals that neither is the case:

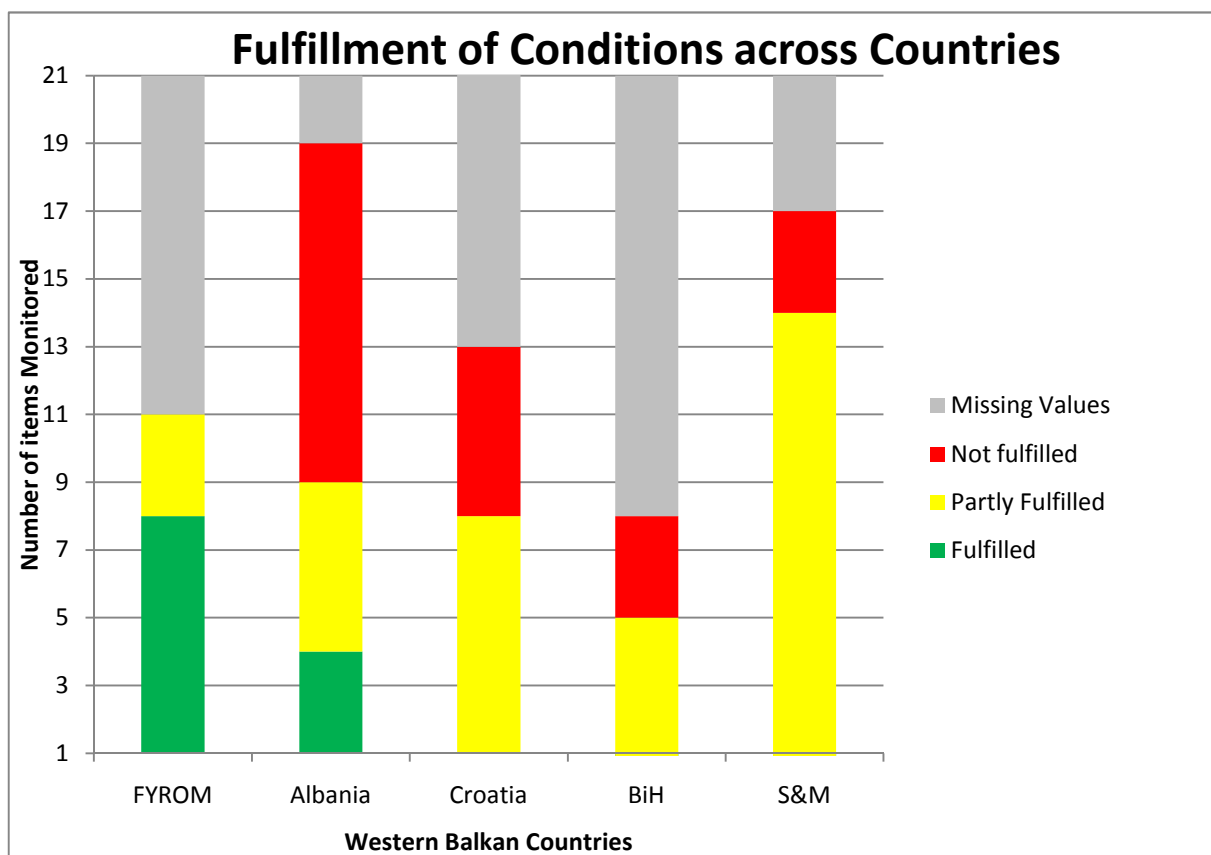


Figure 6.6: Cross-country comparison for Indicator II

The above figure adds meaning to the Commission’s wording of “sufficient progress” that is sought to be needed before negotiations could actually begin. As variation – yet again – is

strong, it is difficult to detect a crisp content in “sufficient progress”. The strongest case for the conditionality argument is FYROM, receiving a recommendation as the first one as early as in 1999. Indicator II points towards broad fulfillment of conditions despite the generally small number of items explicitly commented upon (11 out of 21). Albania receives its recommendation for negotiating an SAA when the Commission herself states that the country is “far from political normalization” (European Commission Directorate General IA 17.05.1999: 24).

All three countries faced with special conditions receive the Commission’s recommendation at a time, when even the special conditions are not fulfilled. The Dayton signatories – Croatia, BiH and the State Union – receive a recommendation to advance towards concluding bilateral relations despite the fact that the Commission does not see the conditions of ICTY cooperation fulfilled. In other words: the countries in question do not (fully) obey its legal obligations arising out of the peace agreements. In the case of the State Union, the Commission’s recommendation is accompanied by its clear warning that it would propose to the Council that “negotiations would be suspended” in the case that “republican authorities have not lived up to their commitments” (Commission of the European Communities 09.11.2005: 4).

The consistent application of conditionality has been tested for indicator II and III alike on three levels: first, it has been shown that the very number of conditions explicitly mentioned varied over time within a country as well as across countries. Second, in the absence of a crisp meaning of each of the verifiable elements it could be shown that each item is measured against the domestic status quo. This idea is consistent with the Commissions claim to account for heterogeneous domestic conditions but runs counter to the idea of a merit-based approach that rewards compliant behavior. Adding to this is the finding of sub-conditions being introduced alongside the Council’s list once statehood is not guaranteeing self-sustainability, as in the case of BiH and the State Union. Third, combining indicators II and III showed that the recommendation to open negotiations is not based on finding progress beforehand. The claim of “sufficient progress” could not be filled with substantial meaning in a cross-country comparison.

In sum, the empirical analysis of indicators II and III does not argue for consistent application of conditionality. If domestic conditions influence the monitoring practice, the merit-based approach underlying the concept of conditionality evaporates.

7 Indicator IV: Credibility of Threats and Promises

The analysis for indicators I to III showed that the application of conditionality suggests variation. Countries are, firstly, faced with different sets of conditions distinguishing between Dayton and Non-Dayton signatories. The monitoring practice varies, too: not all items are actually mentioned in the reports. The number of items measured also shows variation, both over time and across countries. What is more, the Commission's monitoring efforts are reward-driven in the sense that the most advanced country's subsequent step determines the monitoring for other countries as well, although it might not even maintain contractual relations at the point in time. As of 2004, the country's performance in meeting EU requirements is assessed under the membership umbrella even though BiH or the State Union of Serbia & Montenegro did not even advance towards concluding a Cooperation Agreement. Finally, the preceding chapter showed that the Commission's very own recommendation to advance bilateral contractual relations is not based on the country's fulfillment of requirements. Both indicators II and III failed the empirical test for consistent application of conditionality.

Adding to indicators I to III is the analysis of indicator IV or the Council's credibility of threats and promises. In a first step, the following figures contrast indicator II with indicator IV: according to the reinforcement by reward hypothesis, I expect that over-time progress in fulfilling the Council's requirements would lead to the conclusion of an agreement. Fulfillment of conditions – as measured by the Commission – is thus a necessary condition in order to reach the expected outcome. The figures provide a country-per-country over time comparison that maps the level of fulfillment of conditions (indicator II) at the point in time the country advanced to the next threshold towards concluding bilateral contractual relations (indicator IV). In doing so, they allow for statements on the intended logic of gradual rewarding where the level of progress in meeting the Council's conditions increases from one threshold to the next.

7.1 General Conditions and pre-existing Cooperation Agreement

7.1.1 FYROM

FYROM presents the second best case for the reinforcement by reward hypothesis: even though the fulfillment is not highest at the point of the agreement's conclusion the country's overall performance is best compared to its neighbors. The assessment of progress in meeting the Council's conditions is not without _ ambivalence though: albeit the Commission does not report on any cases of non-compliance, the number of those items found to be fulfilling EU requirements decreases slightly over the course of intensified cooperation. The number of items explicitly reported on also decreases over time.

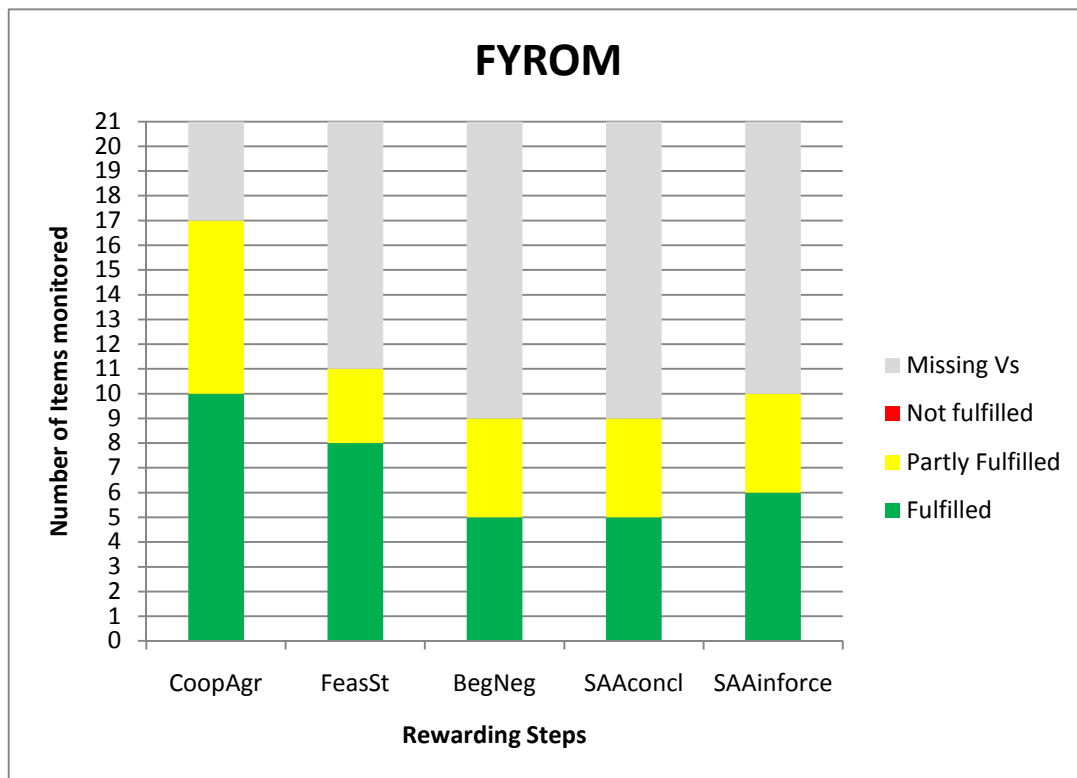


Figure 7.1: Indicators I, II, III and IV for FYROM

By the time the Cooperation Agreement came into force at the end of 1997 the Council adopted the Commission's operational conclusions on conditionality in echoing FYROM's overall performance. The Council found a comprehensive respect of democratic principles and efforts employed "encouraging" (2041st General Affairs Council: Annex II, point 4). Only five months later, the Council's opinion read more optimistically: it envisaged the

possible upgrading of contractual relations “at a later stage” though without defining the decisive point in time. A clear link has, however, been set to the implementation of the Cooperation Agreement, a condition that is outside the scope of general or specific conditions as it touches a domestic status quo only (cf. 2085th General Affairs Council: 8).

In November 1998 following the Commission’s third presentation of operational conclusions the Council repeated the continuation of the process upon fulfillment of relevant conditions. For FYROM, it repeated its earlier remarks that the upgrading of relations or the conclusion of an SAA would be considered at a later stage (cf. 2129th General Affairs Council).

FYROM’s major step forward was issued in the Council’s conclusion in June 1999:

“The Council notes the positive record achieved so far, as well as the country’s compliance with the relevant conditions. It welcomes that, in accordance with its Conclusions of 8 and 26 April and 31 May 1999, the Commission has presented its report on the feasibility of the opening of negotiations for a Stabilisation and Association Agreement with this country.” (2192nd General Affairs Council: 12).

Interestingly, the Council talks of “compliance with the relevant condition”. A cross-check with indicator III or the Commission’s monitoring however reveals that not all items have been monitored, not all items are found to be fulfilled. In the respective report, there is no explicit mentioning of fulfillment of democratic principles, the Commission’s report further finds that presidential elections were marked by irregularities and reported cases of arbitrary conduct of the security police (European Commission Directorate General External Relations 09.02.2000: 20f). With five of 21 conditions found to be fulfilled, no doubt FYROM performs best among the Western Balkans, spatially compared. Nevertheless, correlating indicators II, III and IV fails the empirical test for consistent application of conditionality.

That leaves room for basically one inference: compliance with relevant conditions is determined in terms of the domestic status quo. The country’s progress would thus be exclusively measured against domestic standards and not in a region-wide transparent principle where same standards result in identical upgrading of contractual relations.

7.1.2 Albania

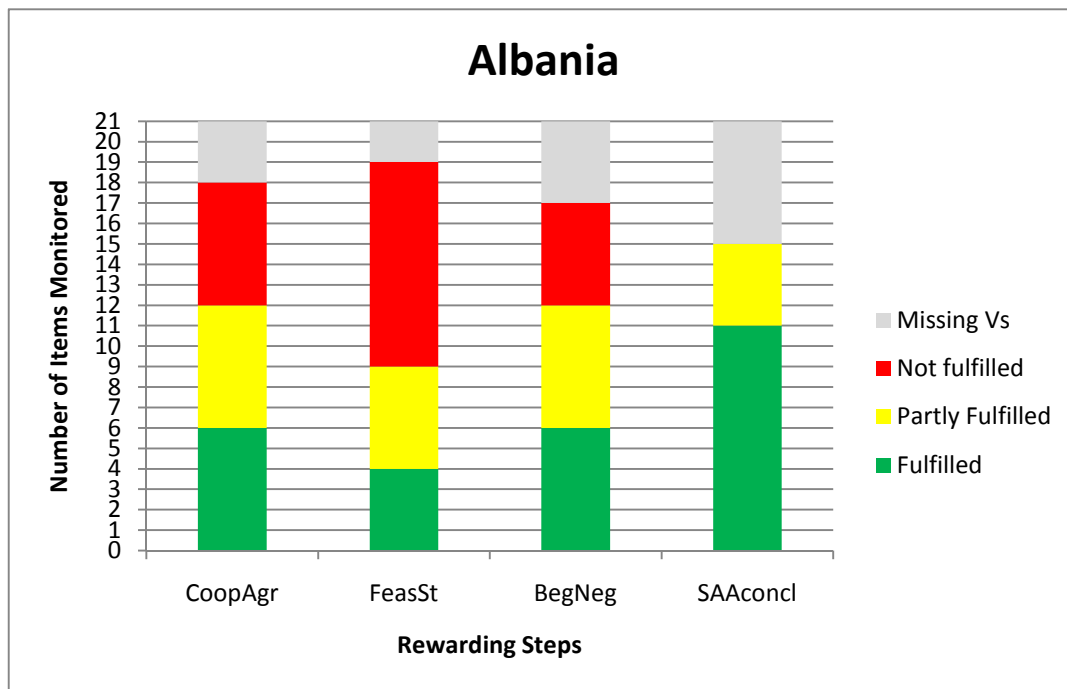


Figure 7.2: Indicators I, II, III and IV for Albania

Comparing indicator III for Albania and the case discussed above, the former has gone a longer way towards fulfilling the Council's requirements: even upon the conclusion of the Cooperation Agreement, the country was far away from political normalization: in October 1997, four out of five conditions touching upon human rights respect and the rule of law are not fulfilled. There are cases of inhuman treatment reported, equality before the law and equal protection "n'est pas toujours appliqué". Moreover, the respective report quotes the "absence d'une constitution en bonne et due forme" (European Commission Directorate General IA 03.10.1997: 5). Items found to be unfulfilled regarding democratic principles are not reflected in the Council's conclusions that "welcomed the encouraging signs resulting from the undertakings given by the new Albanian government..." (2041st General Affairs Council: 4). Strikingly, the threshold of fulfillment is lowered compared to the year within which the Commission issued the feasibility report: so although the overall political situation in the country deteriorated, the Council seconds the Commission's recommendation to report on the feasibility of opening negotiations. Contrary to FYROM, the Council's respective conclusions contain no notion of compliance. They rather echo the Commission's recommendation:

“In accordance with its Conclusions of 26 April and 31 May 1999, the Council welcomes that the Commission will prepare, as soon as possible, a report on the feasibility of the opening of negotiations for a Stabilisation and Association Agreement with Albania” (2192nd General Affairs Council: 10).

The very same report, however, contains a discussion of Albania’s status quo that reads as follows:

“There has been progress regarding the respect for democratic principles, human rights and market economy reform. However, large parts of the country remains marked by a lack of public order and security” (2192nd General Affairs Council: 9).

Earlier reports named the well-known challenges to the domestic status quo and urged government and political leaders alike to overcome continuous setbacks and uneven progress (cf. conclusions regarding Albania 2129th General Affairs Council, 2126th General Affairs Council or 2113st General Affairs Council).

The above figure mapping the Commission’s assessment of compliance before Albania took the next stepping-stone towards signing its SAA clearly corroborates the idea of improved fulfillment of the Council’s conditions: by the time Albania concludes its SAA, half of the number of items on the list of verifiable elements is found to be fulfilled.

Albania and FYROM present the two cases where contractual relations existed prior the eventual conclusion of an SAA. In both cases, the Union concluded Cooperation Agreements with both long before the special brand Associations Agreements were even offered to the Western Balkans. With regard to consistent application of conditionality, the Council had the possibility to stick to the already existing agreement and the provisions therein without explicitly referring to its conclusions of 29 April 1997. In the case of FYROM, the Council concluded that compliance with the relevant conditions could be observed although indicator III does neither support the idea of relevance fulfillment improving the closer a country advances towards the promised reward. In the Albanian case, the Council simply echoed the Commission’s recommendation.

7.2 General + specific Conditions and no contractual Relations

7.2.1 Croatia

In the Croatian case, the prevalence of the compliance-reward hypothesis must be doubted on first inspection: Croatia advanced from the presentation of its feasibility study, to negotiate to sign its SAA within only one reporting period of the Commission. The figures below thus represent an identical assessment. That is surprising, as the overall compliance record is significantly lower than in the Albanian or the Macedonian case, spatially compared and regardless of the over-time control. This practice contradicts the Council's spatial logic of rewarding: as the respective Council conclusion states, the beginning of negotiations for an SAA demands a lower level of compliance than the conclusion, suggesting that there is more than one compliance report to actually assess the over-time performance. This logic is clearly undermined in the Croatian case, adding to the globally low level of compliance.

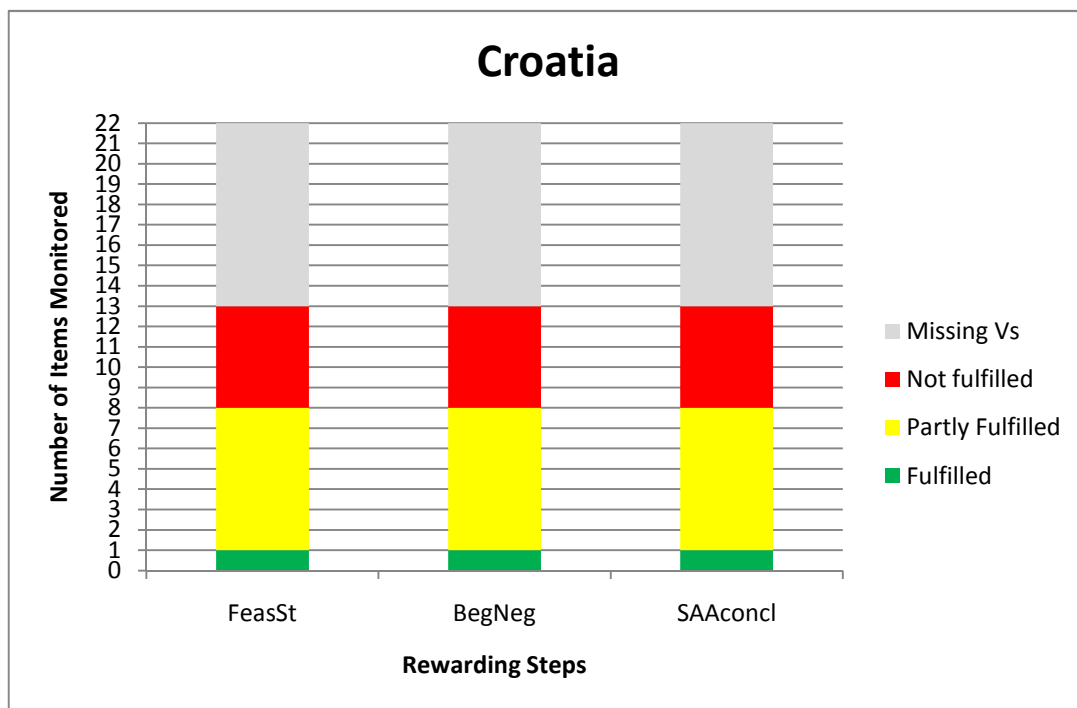


Figure 7.3: Indicators I, II, III and IV for Croatia

A closer look on the distinction between general and specific conditions reveals that both Commission and Council unanimously found that neither ICTY cooperation nor Croatia's obligations arising out of the peace agreements were fulfilled by the time of granting the

promised reward: The Commission stated modest improvements but cooperation with the ICTY “unsufficient” (European Commission Directorate General External Relations 09.02.2000: Point 1.6). In the same vein,

“The Council regretted the fact that despite the progress made by Croatia, its relations with the European Union have not fulfilled their potential. The actual record of Croatia has fallen short of what is expected from countries in transition. The Council emphasized that the near future should reveal Croatia’s readiness to take the steps necessary to enable the European Union dynamically to develop its relations with Croatia. Furthermore, with a view to the Stabilisation and Association Process, Croatia can expect active support for transition from the Union if it improves its performance and meets the EU’s conditionality criteria” (cf. 2217th General Affairs Council).

The Council’s above statement is in line with its earlier conclusions that confirmed a “discrepancy between statements of intent and their practical implementation” that, in November 1998, led the Council to conclude that “negotiations on a cooperation agreement would...be premature” (2129th General Affairs Council). However, the Council’s conclusion that “the necessary conditions have been met” of June 2000 is only six months later, thus drawing on the identical assessment of progress by the Commission (2271st General Affairs Council). As Croatia is the first in line to signs a SAA, the Council’s notion of “necessary conditions” is quite important as it determines the benchmark as to when the reward would be granted. It is thus most inconsistent that by the time of rewarding, not even special conditions were found to be fulfilled by the Commission.

7.2.2 Serbia and Montenegro

The spatial comparison of the Commission’s assessment for the State Union of Serbia-Montenegro and then later independent Montenegro and Serbia as the successor state neither suggest a causal link between fulfillment of conditions and reward. It does, however, suggest a sequential logic where improving fulfillment with conditions is needed the closer a country moves towards the next step of intensified contractual relations.

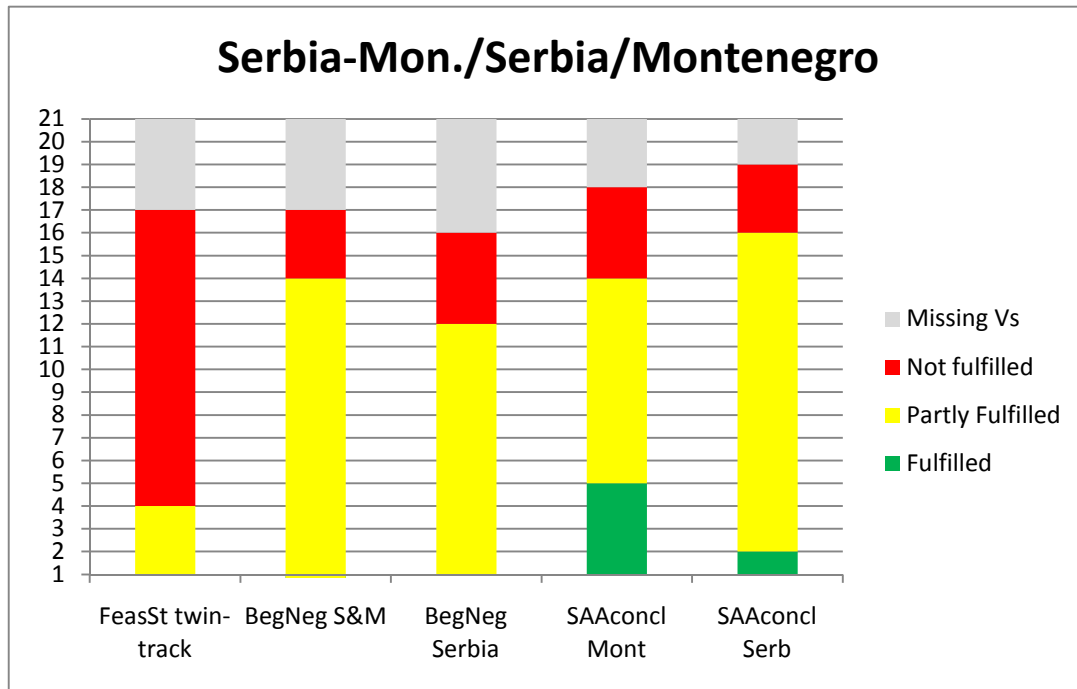


Figure 7.4: Indicators I, II, III and IV for Serbia and Montenegro

The above figure maps the rewarding steps for the State Union in the twin-track approach, second the renewed round of resumed negotiations and thirdly for the two independent countries following the Montenegrin declaration of independence. The figure shows an overall high number of items explicitly monitored through the number of items fulfilled is small.

Serbia as well as Montenegro posed a challenge to the application of conditionality as by the time the first feasibility study was launched, the constitutional architecture was not set in stone. The two republics rather emerged on divergent pathways. The Commission's report of March 2003 noted:

„Erst wenn über das institutionelle Gefüge und die rechtliche Ordnung des neuen Staates Klarheit herrscht und in den Politikbereichen, die das Kernstück eines SAA bilden, eine Harmonisierung stattgefunden hat, kann die Kommission bewerten, ob die Aufnahme vertraglicher Beziehungen machbar ist“ (Commission of the European Communities XXX: 40).

This statement underlines the importance of a constitutional setup respecting democratic principles as presented by the Council's conditions. Following the delay in adopting the new constitutional charter, the Council postponed the conduct of the feasibility study in May 2004 (cf. 2582nd External Relations Council). Despite the delay, it is relaunched in a so called twin-track approach reaffirming the Council's commitment to strengthen the constitutional

setup of the State Union (cf. 2609th External Relations Council). Against the background of ongoing tensions and hurdles to the implementation of the constitutional charta, the Council recognized the substantial progress by the State Union in April 2005 (cf. 2656th External Relations Council). The Council does not name the areas referred to, it was, however, clear from the latest assessment that the substantial progress was not in meeting the conditions – special or general. In 2004, the Commission's report on progress is clear in stating non-fulfillment of specific conditions, notably regarding the country's ICTY cooperation (Commission of the European Communities XXX: 23). Despite this clear non-fulfillment of a specific condition, negotiations are opened in December 2005 nevertheless (2701st External Relations Council). Another six months later, in May 2006 negotiations were called off as the Council regrets that the State Union was still not fully cooperating with the ICTY (2728th External Relations Council). The calling off negotiations present the single case of non-positive measures applied in the advancement of bilateral contractual relations vis-à-vis the Western Balkans. The referendum of independence on 21 May 2006 again challenged the application of conditionality as the twin-track approach had to be split to newly independent Montenegro and the successor of the State Union, Serbia (cf. 2737th External Relations Council). Soon after, the Council proclaimed a modified structure: whereas negotiations with Montenegro were envisaged to start soon, full cooperation with the ICTY was again prominently emphasized before negotiations would start with Serbia (2748th/2749th General Affairs and External Relations Council). To remember, negotiations with the State Union were called off due to a continuing persistence in not fully cooperating with the ICTY. In February 2007, the Council resumes negotiations despite the Commission's assessment, that this item was not fulfilled (cf. 2780th External Relations Council, 2809th General Affairs and External Relations Council). This practice is a departure from the consistent application of conditionality. The Serbian case illustrates that the reward is granted while simultaneously repeating obligations that existed ever since. In the Montenegrin case, the Council does not even comment on the Commission's assessment as in the other cases: the signature on 15 October 2007 is accompanied by the Council's conclusion that the country would have to adopt a constitution that is to comply with international standards (2824th General Affairs and External Relations Council), one of the general conditions of the Council's list of requirements. The granting of the SAA for Montenegro comes without any prior statement on progress as in all other cases, presenting again a departure from consistent application of conditionality.

In the case of Serbia, the Council welcomes the initialing of the SAA but again recalling that full cooperation with the ICTY was an essential element to the agreement (2840th General Affairs and External Relations Council: 14). Finally, Serbia signed its SAA in April 2008 (cf. 2864th/ 2865th General Affairs and External Relations Council).

It seems that the Council was too keen on handing over the carrot to Serbia, though the non-fulfillment of at least one specific condition was too severe to be simply ignored. As in the Croatian case, the SAAs with Montenegro and Serbia were concluded despite the Commission's assessment of non-compliant behavior with regard to three or more requirements.

7.2.3 Bosnia and Herzegovina

Finally, the last figure presents the data for BiH: of all countries of the Western Balkans, the Commission's assessment finds the poorest performance in meeting the Council's requirements: even though the figures suggest a sequential logic with fulfillment of conditions increasing slightly over time, by the time BiH concluded its SAA there is still non-compliance in as much as seven areas. After roughly three years of negotiation, BiH signed its SAA in June 2008 despite the Commission's monitoring that saw all democratic principles unfulfilled (2878th General Affairs and External Relations Council).

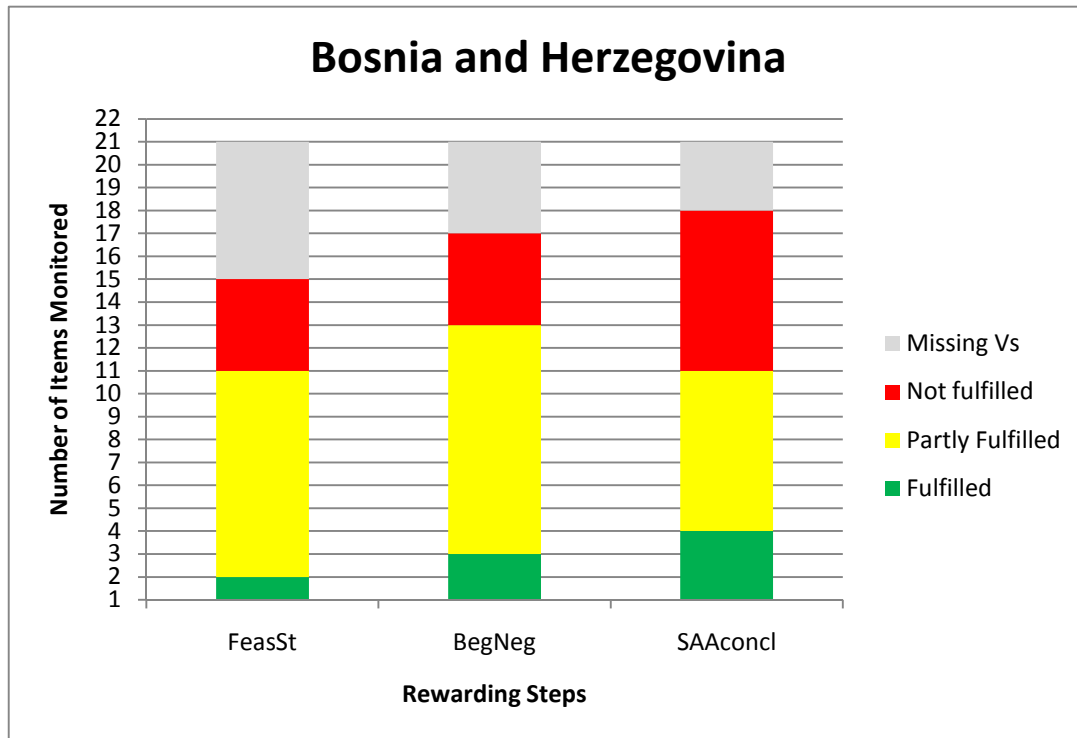


Figure 7.5: Indicators I, II, III and IV for BiH

In line with the country's special situation in terms of constitutional provisions and engagement of the international community, the run-up towards concluding an SAA was amended in agreeing on a road-map for reform. The road-map of March 2000 presents an exclusive list of 18 basic steps whose completion might lead to the actual beginning of negotiations for an SAA. The very existence of the road-map is a departure from applying conditionality consistently, as it is a country-specific measure solely applied in BiH. The Commission herself delivers the objective of this road-map:

“This state has no country-wide system administration, no army and an at best embryonic judicial system. Moreover, limited formal powers are matched by a very limited ability to raise revenue - the BiH State must rely mainly on Entity contributions” (Commission of the European Communities 04.04.2002: 4).

All these factors limit the countries capacity to comply with conditions in the first place. As early as 2002, BiH is put last in line of the SAP process: As one annual report for the country states, BiH is a participant to the SAP like all its neighbors but only “at an early stage of the SAP” (Commission of the European Communities 04.04.2002: 17). A Feasibility Study was nevertheless launched in June 2003 and adopted on 18 November 2003. The Council found substantial completion of the road map but remained concerned about the overall fragility of state institutions (cf. 2518th General Affairs and External Relations Council). The threshold

towards advancing towards negotiation is thus the substantial completion of the road map rather than specific and general conditions presented by the Council – another departure from the consistent application of conditionality. Negotiations were then officially opened on 25 November 2005 and thus in the same week that the world celebrated the 10th anniversary of the Dayton agreement. The early opening came at a price: negotiations were postponed once (2679th External Relations Council) and constantly accompanied by severe warnings, that number of issues were to be tackled before the SAA could be concluded (2771st External Relations Council). Negotiations were later not stopped despite the Council's concern on a general deterioration regarding the country's poor overall stability (2831st General Affairs and External Relations Council).

The Commission's urge to make sufficient progress is later focused on two projects, the latter of which is not part of the Council's list of conditions: full cooperation with the ICTY and the police reform (cf. 2859th General Affairs and External Relations Council). In adding emphasis on a policy field that is not subject of explicit conditionality, the Council echoes the Commission that repeatedly stated the necessity to fulfil all relevant conditions before the agreement would be concluded. The notion of negative measures is not explicitly spelled out however:

“The signature of the SAA will require evidence that the police reform is irreversibly on track, as well as full cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY). Progress in the areas of public broadcasting and public administration reform will also be required before the SAA is signed. Failure of Bosnia and Herzegovina's political leaders to achieve the necessary reforms and to conclude the SAA would seriously undermine Bosnia and Herzegovina's prospects of European integration” (Commission of the European Communities 06.11.2007: 5).

Following the adoption of the police reform, the Council was quick to announce its readiness to sign the SAA with BiH (cf. 2864th/ 2865th General Affairs and External Relations Council). The signature finally took place on 16 June 2008 regardless of an even higher number of non-fulfilled items (2878th General Affairs and External Relations Council).

Contrary to the Serbia, BiH does fulfil the special conditions of regional cooperation and full ICTY cooperation by the time it concluded the SAA (cf. Commission of the European Communities 06.11.2007). The Dayton provisions – found to hinder the effectiveness of democratic principles from the start – are however not explicitly commented on.

Similar to Serbia, the nearest available threshold to gain the promised reward such as the beginning of negotiations is brought forward at a time when progress in fulfilling conditions stagnates or even aggravates according to the Commission's monitoring. In the case of the former State Union, the Council accommodated the rewarding strategy to the new constitutional setup after it had underlined its readiness to maintain the status quo. The retention of the status quo also guides the rewarding pattern in BiH, although there is no doubt – neither in the Commission's reports nor in the Council's conclusions – that democratic principles are not fulfilled under the Dayton (constitutional) provisions.

Both cases BiH as well as Serbia showed that in the absence of overall progress in fulfilling the conditions, the Council shifts its full attention towards fulfillment of only one or two conditions: ICTY cooperation in the case of Serbia and the adoption, not yet implementation of the police reform in the case of BiH. Upon fulfillment, the Council somewhat immediately advances towards granting the next rewarding step, be it the beginning of negotiations or the conclusion of the SAA. In both cases, fulfillment was not substantive as negotiations were either postponed (Serbia) or accompanied by repeated reminders on exactly the same issue that was in focus. These findings correlate with the fact that both countries were the last to establish bilateral contractual relations. To remember, neither BiH nor Serbia maintained SAA's until 2008 and 2007 respectively.

7.3 Mapping inconsistent Application of Conditionality

The correlation between indicators II and IV strengthens the empirical results arguing for inconsistent application of conditionality. Inconsistency builds on the fact that not all countries receive identical conditions, not all items on the Council's list of requirements were actually monitored, monitoring further varied over time and across countries and finally, shifting the focus towards the conclusion of an SAA, I found cases of explicit non-fulfillment of requirements that were rewarded: BiH's performance in meeting the condition's changes for the worse throughout the Commission's recommendation, the beginning of negotiations and the SAA conclusions. For Serbia and Montenegro, there is an improvement but against a very low performance that does not even include fulfillment of the set of special conditions. The Croatian case is inconsistent on two levels: firstly, by rewarding the country with an SAA the Council waters down the sequential logic regardless of the Commission's finding that

ICTY cooperation is uneven. Secondly, the country's performance in meeting the requirements is generally low. Albania and FYROM present two cases that fit best with the idea of consistent application: they show the best performance across the region while Albania's figure illustrates the sequential logic of constant improvement prior the actual conclusion of an agreement.

Even though the determinacy of conditions is high regarding special conditions, their very fulfillment did not serve as a necessary condition to advance further; neither in the case of Serbia nor in BiH. On the contrary: in the run-up to the advancement of bilateral contractual relations, both countries received the SAA with repeatedly voiced statements on the necessity for fulfillment of full ICTY cooperation in the case of Serbia or the police reform in BiH. All examples except Serbia show the application of positive measures rather than negative ones. In the Serbian case, the postponement of negotiations was once justified with the country's poor performance in meeting the requirement of full ICTY cooperation, the second re-launch followed the new constitutional architecture of the former State Union.

Following the Commission's logic of consistent application of conditionality over time and across the region, the correlation of indicators I to IV alone argue for the failure of the meritocracy expectation: fulfillment of conditions is at best a sufficient condition in the case of FYROM and Albania. BiH, S&M as well as Croatia, however, is rewarded despite the non-fulfillment of conditions.

8 Conclusion

Contractual relations between the EU and the countries of the Western Balkans are a story of promises made, but were they also kept? By the time the Balkan wars ended in late 1995, the EU's look towards its southeastern neighborhood was one of shame: the losses of tens of thousands of civilian lives could not have been prevented. The idea to invent a policy approach towards the entire region came at a time when the countries of Central and Eastern Europe were moving towards the ultimate step of full integration: accession to the EU. This dissertation analyzed the application of the conditionality principle for two reasons: first, the literature does not provide a unanimous answer to whether or not conditionality is applied consistently. Second, a measurement on the application of conditionality vis-à-vis a group of states does not exist to date. The latter fact enforced the inductive, comparative take on the topic that promises systematic empirical insight but limits the theoretical scope.

8.1 Summary of Findings

The descriptive design aimed at analyzing the relationship between the evolution of bilateral contractual relations between the EU and the countries of Former Yugoslavia and the progress in meeting the EU's requirements. The observation presented in the beginning illustrated that the five countries included in the cases under scrutiny advanced differently towards the ultimate goal of accession: there is a variation over time – conclusion of agreements in different years – and spatially – not all countries concluded the agreements as they were offered, some took shortcuts and returned later to the envisaged schedule.

There are two considerations to this observation: firstly, the clue to explaining this variation might well lie within the countries, namely within their capacities to take on the obligations of each agreement. Secondly, another clue might be the EU's approach to the individual countries. Irrespective of the fact that all the agreements in questions are part of a regional strategy and thus offered on equal terms, the EU's treatment of the individual countries might vary, too. What links these bottom-up as well as top-down ideas is the application of conditionality. By design, it is to comfort both, EU interests in cooperation and their intensification as well as capabilities of the partner country. However, there is unanimity

regarding the application of conditionality in the literature. Studying the effects of conditionality, two competing arguments on its very application exist: Assuming a logic of consequence, a direct impact using incentives and the compliance mode of governance, Vachudová holds that a country's position in the queue to membership reflects its success in meeting the EU's requirements assuming a meritocratic application of conditionality (Vachudová 2001). The most prominent mechanism seeking to explain the impact of conditionality is reinforcement by reward. Even though the research interest is limited to the very application, the mechanism helps determining the working of conditionality in that it assumes the setting of incentives to alter the third state's fulfillment.

In order to determine the scope of rule transfer, four conditions are postulated: the determinacy of conditions, size and speed of rewards, credibility of threats and promises and cost-benefit-calculation of domestic actors (Schimmelfennig and Sedelmeier 2004: 664-666). Again, the objective is not on measuring compliance. The above mentioned propositions, however, helped measuring the very application of conditionality. It is the dissertation's foremost objective to contribute to this debate by presenting empirical evidence on the application of conditionality. This dissertation thus challenges Vachudova's meritocracy argument in measuring the application of the conditionality principle. Against the competing theoretical propositions, I proposed to test the application of conditionality vis-à-vis the Western Balkans. I conceptualized the evolution of bilateral contractual relations as a strategy of rewarding progress on the third countries domestic grounds.

Empirically, the study grasps the EU's policy frameworks towards the Western Balkans or Former Yugoslavia and Albania and the agreements offered within these. In doing so, the research question seeks to correlate the variation in concluding bilateral contractual relations and will thus focus on the in-between relationship between the EU as an institution and the states as the ones being influenced. The focus is neither on the impact of this external influence, nor is it on how the transformation process within the countries themselves backfires on the policy production. It rather takes the policy design as a given and zooms into the application, namely how exactly the EU exerts its capacities to monitor the country's performance in light of conditions set for the intensification of contractual relations. The research objective, consequently, lies in gaining inductive results on the application of conditionality in measuring its variation.

The analytical level is a cross-country and over time comparison. It is cross-country to determine whether or not the application of conditionality varies across the region. Intuitively,

one would expect otherwise as all agreements under investigation carry the same carrot for all countries. Thus, consistent application would reveal identical conditions for all countries, at least for identical agreements. The Council's own understanding of conditionality as a flexible instrument to comfort the partner country's needs justifies the temporal comparison. The empirical analysis thus proceeds in a comparative fashion – both spatial and over time.

I proposed to measure conditionality with the help of four indicators: They comprise the determinacy of conditions set by the Council (indicator I), the Commission's monitoring of progress in meeting these conditions (indicator II), the Commission's recommendation to eventually advance contractual relations upon fulfillment of conditions (indicator III) and the credibility of threats and promises in the Council's respective conclusion to either advance relations or not (indicator IV). These indicators strive to include both ends of the reinforcement by reward assumption, the conditions set by the EU and their fulfillment by the partner country. The determinacy of conditions provides insights on whether or not the set of conditions are crisp and identical to each type of agreement and how they evolve over time. The second indicator tests whether or not the Commission's monitoring efforts match deeds to words in a comparison of progress reports on the country's stance in meeting EU requirements. It is important to note that the analytical design does not measure actual compliance but fulfillment of conditions as perceived by the EU (indicator II). Whether or not the Commission rests its very own recommendation on the advancement of relations to progress identified is another crucial test for consistent application of conditionality. Lastly, indicator IV maps the fulfillment of conditions by the time the Council decides to upgrade existing bilateral relations.

In line with the propositions outlined in the theoretical section I expect conditionality to be applied consistently with the fulfillment of conditions being rewarded with advancing bilateral contractual relations while non-fulfillment would not be rewarded. Critics may argue that the research design falls short of providing a clear explanation. The fact, however, that the literature offers two dichotomous views on the very application justifies a descriptive, systematic measurement of conditionality.

The empirical analysis departs from the observation that the countries of the Western Balkans – Albania, BiH, Croatia, FYROM, Montenegro and Serbia – sought to establish bilateral contractual relations ever since the Balkan wars ended in 1995. The outcome or size and speed of rewards granted however shows variation: During the observation period from 1996

to 2010 the countries advanced at most different speeds: whereas Croatia has been negotiating membership since October 2005, BiH and Serbia have not even applied for membership yet. Chapter four mapped bilateral agreements offered to the countries throughout the two policy approaches – namely the Regional Approach and the SAP. It was shown that incentives did increase over time though not comparable to the agreements that were offered to the countries in Central and Eastern Europe. While the Cooperation Agreements offered as of 1996 were only concluded with two out of the then five countries, the successor policy approach provided an enriched agreement accompanying the potential candidacy proclaimed in summer 1999. The outcome in bilateral contractual relations with the Western Balkans thus shows two specificities: there is a considerable temporal variation (figure 4.1) as well as variation regarding the agreement's general provisions. Both findings seem to contradict the idea of a regional approach. They do, however, not tell about consistent or inconsistent application of conditionality. Rather, the results of chapter four reinforce the need for measuring its application in the first place. Comparing the outcome in bilateral contractual relations in chapter four revealed that in order to account for variation both over time and spatial, only the SAAs may serve as *tertium comparationis*: the SAA's are subject of explicit conditionality and carry the full temporal variation as all countries signed one.

Chapter five presented the Union's setting of conditions for bilateral contractual relations and measured their determinacy. It found that the degree to which conditionality was applied varied with regard to the different types of agreements on offer. From the outset, the application of conditionality had one specific feature: it distinguishes between general conditions applying to all countries and specific conditions applying to individual countries only. This distinction resulted from a dividing line that existed ever since the Balkan wars ended: the region was split into those that were Dayton signatories and those that were not. Consequently, the countries were confronted with reconstruction to most different degrees. Distinguishing between general and specific conditions thus provided a container for providing tailor-made assistance and in stating clearly what a country would have to fulfil in order to reach the stepping stone towards establishing bilateral contractual relations. A second distinctive feature is the inclusion of Albania. Irrespective of the fact that the country did not belong to Yugoslavia, neither had it participated in war activities nor did the problems the country faced related to the violent break-up of former Yugoslavia. It did, however, share the feature of not having signed an association agreement in back 1995. By the time the EU

invented its first policy approach to the region called the Western Balkans, it grouped together those that did not maintain association agreements such as their northern neighbors in Central and Eastern Europe. Number and scope of requirements increased over time. In 2004, the set of conditions comprised conditions arising out of the peace agreements for those applicable, those issued by the Council when presenting its Regional Approach in 1997 and those contained in the SAP in 1999, country-specific conditions such as the need for reconciliation with neighboring countries and the Copenhagen or accession criteria on top of it.

Considerable overlap and the exceptionally broad nature of these sets of conditions put their determinacy in doubt. “Rule of law” for instance, may be mentioned in the peace agreements, in the Council’s 1997 set or within the SAP’s specific conditions. Schimmelfennig and Scholtz assumed different sets of incentives that increased in credibility and size over time. I do find increasing incentives but simultaneously, the front running country seems to determine the set of conditions in place: As of 2004, BiH, for instance, was monitored against the Copenhagen or accession criteria although the country did not maintain any contractual relations at that time. So while incentives and credibility do increase, the set of conditions at work is not identical to all countries in question. Conditions also vary for each agreement given the distinction between general and specific conditions.

The Commission’s intent to apply a graduated approach in measuring the fulfillment poses another serious challenge to consistent application of conditionality. The analysis of the Commission’s progress reports monitoring compliance were presented in a county-per-country over-time comparison in order to assess how the Commission’s judgment on progress developed throughout the observation period. The analysis for indicators I to III showed that the application of conditionality suggests variation: Countries are, firstly, faced with different sets of conditions distinguishing between Dayton and non-Dayton signatories. The monitoring practice varies, too: not all items are actually mentioned in the reports. The number of items measured also shows variation, both over time and across countries. What is more, the Commission’s monitoring efforts are reward-driven in the sense that the most advanced countries subsequent step determines the monitoring for other countries as well, although it might not even maintain contractual relations at the point in time. As of 2004, the country’s performance in meeting EU requirements is assessed under the membership umbrella even though BiH or the State Union if Serbia & Montenegro did not even advance towards concluding a Cooperation Agreement. Finally, the analysis for indicator III showed that the

Commission's very own recommendation to advance towards the promised reward is not based on the country's fulfillment of requirements. Both indicator II and indicator III thus failed the empirical test for consistent application of conditionality.

To repeat, the Commission's judgment on whether or not bilateral contractual relations improve or not, hinges on the domestic performance:

„Die Bewertung darüber, ob mit einem Land Verhandlungen über ein Stabilisierungs- und Assoziierungsabkommen aufgenommen werden können, richtet sich nach den Fortschritten im Stabilisierungsprozess, d.h. der Erfüllung der entsprechenden politischen und Bedingungen, der Durchführung EU-kompatibler Reformen sowie dem Vorhandensein des notwendigen politischen Willens und der erforderlichen Verwaltungskapazitäten, um die Funktionsfähigkeit des Staats und die wirksame Umsetzung eines Stabilisierungs- und Assoziierungsabkommens zu gewährleisten. Einige Reaktionen auf den SAP-Bericht 2002 beruhten auf dem Missverständnis, dass es bei diesem Prozess nicht nur um die Erarbeitung und Verabschiedung von Gesetzen geht, sondern auch und vor allem um deren *Umsetzung*“ (Commission of the European Communities 26.03.2003: 40).

The concluding analytical step is thus correlating indicators I, II and III with the Council's decision to actually advance the existing level of bilateral contractual relations (indicator IV). Chapter seven further increased variation identified beforehand in that the Council's rewarding pattern does not support the idea of credible threats and promises in rewarding only those that fulfilled conditions. The level of progress identified for those countries that did maintain a Cooperation Agreement and thus upgraded the level of bilateral agreements performed better in meeting the Council's requirements as by the time of concluding the SAA, none of the items were found to be explicitly unfulfilled. The opposite is the case for the other four that were presented general and specific conditions with no contractual relations concluded beforehand: When concluding the SAA, all four had at least three or four items not fulfilled, seven being the worst case (BiH). What is more, the distinction between general and specific conditions is not echoed by the Council or made pre-conditional. Rather, special conditions increase the set of items to be subject to monitoring.

Chapter seven proceeded in spatially comparing the individual country's level of progress in meeting the requirements identified by the Commission. If threats and promises were applied credible and thus consistent, the Council would only advance bilateral contractual relations if there is fulfillment with its conditions and a recommendation of the Commission to do so. That is, however, not the case.

Based on inconsistent application measured for the preceding three indicators, the analysis distinguishes between those countries that had were only presented general conditions and maintained bilateral contractual relations, by the time they concluded an SAA: FYROM and Albania. For FYROM, the number of items of verifiable elements actually monitored ranges between 17 and only 9 out of 21 items on the list of verifiable elements. The overall performance in meeting the conditions is, however, best, again compared spatially: by the time the country took the thresholds to intensify contractual relations, the Commission found no explicit non-fulfillment of requirements. The logic of gradual rewarding is partly respected: the level of measured fulfillment of conditions has never been higher than by the time of concluding a Cooperation Agreement. The consecutive rewarding steps showed a slight decrease in items fulfilled but against the generally lowest number of items monitored at all.

Albania – being the second country that only received general conditions – shows a completely different picture: first, the total numbers of items monitored is higher than in the above case. Second, the Cooperation agreement was rewarded despite the Commission's observation of explicit non-fulfillment of four out of five conditions relating to human rights and the rule of law. Non-fulfillment of conditions even increased when the Council asked the Commission to prepare a feasibility study. The gradual logic of rewarding improved fulfillment throughout the thresholds towards concluding an agreement kicks in only upon the preparation of the feasibility study: by the time Albania concluded its SAA, the number of items fulfilled increased significantly from six to 11 and thus more than half of the total number of conditions. The fact that both FYROM and Albania maintained contractual relations therefore correlate with variation in the number of items fulfilled.

The remaining four – Croatia, Serbia and Montenegro and BiH – faced various sets of conditions: general and specific ones adding to those contained in the peace agreements. Contrary to FYROM and Albania, they did not have contractual relations before they concluded the SAA's. Croatia presents an exemption on two levels: first, the gradual logic is not applied to any degree, as the thresholds towards concluding an SAA were conducted within only one reporting period of the Commission. There was thus no chance to await further improvement. What is even more striking is the fact that only one condition is found to be fulfilled while five are not. With only 13 items being explicitly mentioned, the Croatian rewarding scheme presents the smallest numbers of items explicitly mentioned throughout the region. Serbia and Montenegro present yet another exception to the logic of rewarding

fulfillment of conditions: out of 17 conditions explicitly mentioned, 13 are found not to be fulfilled by the time the Commission presents its feasibility study. Montenegro's declaration of independence in May 2006 caused a change in the existing negotiation approach: instead of finalizing only one SAA with the State Union, negotiations were split for the now independent countries. As in the Croatian case, fulfillment of conditions is present in only one (Serbia) or 5 (Montenegro) areas, while non-fulfillment of items also remains present. The gradual logic of rewarding is observable but against a generally poor performance in meeting the Council's conditions. BiH is last in line with the poorest performance of all: despite a growing number of items fulfilled the number of those explicitly not fulfilled increases throughout the thresholds towards establishing bilateral contractual relations.

In a nutshell, the study showed that the principle of conditionality is not applied consistently in the EU's contractual relations with the Western Balkans.

8.2 Discussion of Results

The empirical analysis finds that conditionality is not applied consistently in establishing or upgrading bilateral contractual relations with the countries of the Western Balkans. It found that the logic of rewarding compliant behavior is not driven by the EU's institution's effort to first set conditions, monitor on-the-ground fulfillment consecutively before actually rewarding an agreement. At the expense of generality, these results carry theoretical implications. The research designs narrow empirical focus ignored number of promising research question, the impact analysis of the application of conditionality being the most promising. The value of this focus, however, has been a straightforward analysis of conditionality and its application in the Commission's year-to-year efforts to not only present reform agendas, but also to facilitate the conclusion of bilateral contractual relations.

Discussing the theoretical implications for this dissertation's finding is yet again a matter of defining the distance to the research topic. It is by all means undisputable that the countries of the Western Balkans are an integral part of the European map that won't be completed until the six countries have acceded as full members, now that this option has been on the table for more than a decade. But even so, the intemporaneity of advancing from one threshold to the

next limits the hopes of optimists who expected a swift fulfillment of the Council's conditions – be it general, specific or membership criteria.

The finding of chapter seven carries implications for the near future: if BiH or Serbia, to name just the laggards, have not fulfilled conditions set in 1997 and 1999 but were rewarded an SAA, what is the inference to be drawn for eventual membership negotiations? A consistent application of conditionality as a means to influence a third states behavior is not only a means in its own right: It foremost presents a justifiable way to judge the performance of today's and tomorrow's applicants for membership other than "cultural affinity, geographical proximity or geo-strategic calculations" (Smith 2003: 105). The clearer Smith's point the more disappointing the results. The key of the EU's success "is not in a threat of coercion, but in attractiveness of the reward it can (can it?) offer to all countries in the Western Balkans." (Timmins and Jovic 2006: 4). As the bracket suggests, it is disputable whether or not the EU's long term offer to the region is credible or not. Arguing from the state of play, it obviously is not, as only two countries made it to the membership path so far – both without any clear timeline. Arguing from the third countries conditions however suggests the opposite, as all the countries show better indicators in terms of their overall performance during the observation period, though the values vary across the region. The credibility is thus again on the two levels: the declaratory nature of the membership perspective and the operational one, on which Croatia and FYROM are more advanced than the others. Credibility of threats and promises thus has to be evaluated against the background of bilateral relations rather than the regional framework. The cases of Croatia and FYROM however add to the EU's overall "credibility...as it demonstrated that the EU was serious about enlargement" (Schimmelfennig and Sedelmeier 2004: 666). The seriousness, however, is contested for the Western Balkans as „the hurdles that need to be cleared in order to join are getting higher as conditionality evolves and the criteria and prerequisites for members are adjusted, and this is before the EU has decided whether it has the capacity and will to enlarge and whether there is popular support for continuing the process and in what form" (Phinnemore 2006: 25). Whereas the dimension of size and speeds of rewards suggests that limited rewards might run counter the domestic efforts for reform and fulfilling conditions, credibility from the EU's perspective might result in a weakened political rationale of including a set of countries as the only credible way to prevent further conflict (cf. Phinnemore 2006: 10). The credibility dimension also reveals the EU's preference towards positive measures as incentives or the absence of

negative measures such as sanctions. Their use “should be considered only if all other means have failed” (Smith 1998: 265).

If it is not a strict application of conditionality within the EU, another fruitful explanatory approach lies within the partner countries. In that sense, the entire process described by the reinforcement by reward hypothesis might be driven to a considerable degree by the domestic state of play in the partner countries. The lower the fulfillment with conditions, the greater the need to adjust exceptionally broad conditions to progress on the partner country’s ground – how petite it might be compared to other countries.

Interestingly, the rewarding element of the EU’s strategy was watered down in its attractiveness, given that the first-generation-agreements with Central and Eastern Europe contained an explicit link to membership. The conditions, however, were increased for the Dayton-signatories and maintained for the other two, even though the very first report in the Commission’s series was clear in stating that the top objective in the late 90’s would be stabilization before integration would be possible. On the rewarding end, the Union made up for the neglect of offering the golden carrot in 1999 – it did however not adjust the set of conditions in place. EU requirements for accession or membership are requirements for integrating third states, not on stabilizing them. The point is that in states that are not stable in the sense of willingness and capability the domestic costs for compliance are way too high. It is only in states that are stable that requirements may be met. The notion of special conditions is meant to fill the gap between those more capable of meeting conditions than the others. Consequently, I would expect these conditions to be fulfilled before the countries in question reach the threshold that allows the conclusion of an agreement.

Optimists could argue that the mere fact of contractual relation being established today with all the countries in question is a success in its own right, given that the region’s political future was somewhat open prior the Dayton negotiations. As golden as the carrot of membership might have appeared upon first glance: the problem is that the offer to a number of countries without a timeframe has long begun to appear quite unrealistic. The prospect of membership for BiH or Albania is so distant, that even optimists talk about two decades rather than a couple of years. If this strong an incentive is necessary to alter the reform process that was witnessed, then it is safe to contend that there is little incentive for those in political

charge today, because there is no more intermediate reward to be earned. So what if the golden carrot is eaten up in a long, daunting reform path?

Two scenarios seem most likely: firstly, the EU herself might not be able to deliver on its very own promise due to internal constraints. Secondly, the prospect of accession might lose its power of attraction. It is a question worth discussing for how long the EU can maintain its attractiveness in the region before it becomes a farce. In that sense, conditionality applied consistently is nothing less than a safeguard: once the EU loosens its tight grip on the requirements it will and already has created precedence cases for those joining later than the front runners. As the enlargement carrot has “enjoyed considerable prominence on the agenda of the EU” some authors express their hope that due to the EU’s “considerable experience and understanding of enlargement, it should be able to manage the aspirations of would-be members more effectively than before” and thus suggests a high determinacy (Phinnemore 2006: 25). If the EU loosens conditionality, the third countries readiness to reform will further decrease as credibility decreases. However the Union proceeds: the EU will be closely watched especially by those that have been criticizing the weak “sequence of policy steps to be undertaken and the structure of incentives that will make them work” ever since (International Commission on the Balkans 2005: 9).

The endeavor to develop a full-fledged explanation accounting for this study’s results is left to the research community. It is, however, safe to contend that the meritocracy argument – where deeds are matched to words – has lost its eventual explanatory power in the Western Balkans long ago.

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Annex

Kurzfassung der Ergebnisse

Deutsch

Die vorliegende Arbeit ist eine empirische Messung der Anwendung des Konditionalitätsprinzips durch die EU gegenüber den Nachfolgestaaten des ehemaligen Jugoslawiens und Albaniens. In einem empirisch-analytischen Forschungsansatz klärt es die Frage, ob das Konditionalitätsprinzip konsistent angewendet wird. Mit anderen Worten: Folgen dem Versprechen, bei Einhaltung gesetzter Bedingungen eine Fortentwicklung von Vertragsbeziehungen durchzuführen, auch Taten?

Ausgehend von der Beobachtung, dass Albanien, Bosnien-Herzegowina, Kroatien, die Ehemalige Jugoslawische Republik Mazedonien, Serbien und Montenegro heute über bilaterale Vertragsbeziehungen mit der EU verfügen, fällt die Ungleichzeitigkeit dieses Fortschritts deutlich auf. Die konsistente Anwendung von Konditionalität wird dadurch keineswegs konterkariert, ist doch die zuvor festgestellte Einhaltung der Bedingungen notwendige Bedingung, bevor bilaterale Vertragsbeziehungen intensiviert werden.

Die darauf gründende Fragestellung ist motiviert durch divergierende, aus der Literatur abgeleitete Überlegungen, die Konditionalität entweder als konsistent oder als inkonsistent angewendet begreifen. Der dem Prinzip zugrunde liegende kausale Mechanismus – das „external incentives model von Sedelmeier/Schimmelfennig – unterstellt das Setzen externer Anreize, um einen Drittstaat zur Einhaltung von Bedingungen zu bewegen. Das Modell geht von vier Grundannahmen aus: Es unterstellt, dass gesetzte Bedingungen konkret und spezifisch sind und dass die Anreize über Zeit steigen. Gleichzeitig muss das gegebene Belohnungsversprechen glaubwürdig sein, ebenso wie die Nichtgewährung bei Nichteinhaltung gesetzter Bedingungen. Schließlich muss die Lage im Partnerland die Anpassungskosten günstiger erscheinen lassen, als die Beibehaltung des Status quo. Diese Grundannahmen erklären, wann es zu Regeltransfer kommt, Konditionalität also die gewünschte *Wirkung* entfaltet. Zu messen wäre dieser Regeltransfer innerhalb der Systeme der Partnerländer. Für die hiesige Fragestellung nach der konsistenten Anwendung von Konditionalität hingegen ist die Wirkung auf nationalstaatliche Systeme zunächst zu vernachlässigen, nicht aber die Grundannahme des Modells. In den Vertragsbeziehungen der EU gegenüber dem Westbalkan lässt sich zeigen, dass die Fortentwicklung bilateraler

Vertragsbeziehungen konditioniert ist, d.h. dem Abschluss eines Vertrages geht die vorherige Feststellung der Erfüllung gesetzter Bedingungen voraus. Dieser kausale Zusammenhang rationaler Prägung folgt der Logik einer Verstärkung durch Belohnung („reinforcement by reward“). Dieser Zusammenhang wird prominent in der Literatur vertreten und lässt eine konsistente Anwendung des Konditionalitätsprinzips erwarten. Dieser Logik folgend stünde zu erwarten, dass die oben beschriebene Ungleichzeitigkeit der Fortentwicklung bilateraler Vertragsbeziehungen mit variierendem Erfüllungsverhalten der einzelnen Länder korreliert. Die Leistung der vorliegenden Arbeit beruht auf der Messung der Ausprägungen von Konditionalität, zwischen 1996 und 2010 angewendet gegenüber einer gleichbleibenden Ländergruppe. Die zu messenden Fälle sind auf bilaterale Vertragsbeziehungen im Untersuchungszeitraum bezogen. Die empirische Messung erfolgt anhand vier aus der Theorie abgeleiteten Indikatoren: dem Setzen von Bedingungen durch den Rat der Europäischen Union (Indikator I), der Feststellung der Erfüllung der Bedingungen durch die Europäische Kommission (Indikator II) und deren Empfehlung über die künftige Ausgestaltung bilateraler Vertragsbeziehungen (Indikator III) und der tatsächlichen Entscheidung des Rates der Europäischen Union, bilaterale Vertragsbeziehungen zu entwickeln bzw. zu intensivieren (Indikator IV). Indikator I misst die „determinacy of conditions“, also die Frage, ob gesetzte Bedingungen eindeutige Handlungsanweisungen enthalten. Je unpräziser die gesetzten Bedingungen, desto geringer die Konsistenz in der Anwendung der Konditionalität. Indikator II ist ein induktiv gewonnener Indikator: er misst nicht echte Regeleinhaltung oder den tatsächlich stattgefundenen Regeltransfer, sondern die Einschätzung der Kommission in Bezug auf die Regeleinhaltung. Wenn bereits die Kommission Regelnichtehaltung feststellt, dann verspricht eine Prüfung der echten Regeleinhaltung im Sinne der hiesigen Fragestellung keinen zusätzlichen Erkenntnisgewinn. Die Grundannahme ist, dass eine rationale Logik, die Erfüllung von Bedingungen belohnt, handlungsleitend ist. Indikator III korreliert die Empfehlung der Kommission zur Fortentwicklung bilateraler Vertragsbeziehungen mit der zuvor festgestellten Einhaltung der Bedingungen (Indikator II). Indikator IV schließlich erhebt das tatsächliche Belohnungsverhalten des Rates. Die Grundannahme lässt klar erwarten, dass nur zuvor festgestellte Erfüllung der Bedingungen die Fortentwicklung bilateraler Vertragsbeziehungen zur Folge hat. Fehlt diese Feststellung, steht die Nichtbelohnung zu erwarten, d.h. in Aussicht gestellte Abkommen würden nicht abgeschlossen. Indikator IV misst also die

Glaubwürdigkeit, mit der Versprechen gegeben bzw. Strafen bei Nichterfüllung angedroht wurden.

Kapitel 4 steht am Beginn des empirischen Teils der Arbeit und zeigt die Varianz in der Fortentwicklung bilateraler Vertragsbeziehungen. Mithilfe des oben genannten Modells erfolgt hier die Messung der Größe und Geschwindigkeit in Aussicht gestellter Belohnungen („size and speed of rewards“). Um eine Analyse über Zeit und für alle Länder zu gewährleisten werden Verträge und deren Ausgestaltung unter Anwendung des Konditionalitätsprinzips identifiziert, die im Fortgang Gegenstand der Untersuchung sind. Der Analyserahmen stellt zwei Anforderungen: zunächst muss ein von der EU zwischen 1996 und 2010 angebotenes Abkommen von allen Ländern der Region unterzeichnet sein, zweitens muss das Abkommen explizit Gegenstand des Konditionalitätsprinzips sein. Um einen Vergleich über Zeit und für alle Länder zu gewährleisten, erfüllen nur die Stabilisierungs- und Assoziierungsabkommen diese Anforderungen.

Anders als wir im Sinne der Verstärkung-durch-Belohnung-Annahme erwarten würden, haben nicht alle Länder die Bandbreite der Region angebotenen Vertragsbeziehungen aufgenommen: am Beginn des Politikansatzes stand 1995 die Beobachtung, dass keines der Länder mit Ausnahme Albaniens über Vertragsbeziehungen verfügte. In den Folgejahren konnten Albanien und FYROM Kooperationsabkommen abschließen. Diese Abkommen sind nicht mit den sogenannten First-Generation-Abkommen gegenüber Ländern in Mittel- und Osteuropa zu verwechseln. Anders als diese enthalten die Kooperationsabkommen keine „essential-elements-Klausel“ die einen direkten Bezug zur Anwendung des Konditionalitätsprinzips zeigen würde. Auch enthalten Sie keinen Hinweis zur Finalität vertraglicher Beziehungen und mithin keinen Nexus zur Vollmitgliedschaftsperspektive. Die Kooperationsabkommen – mit nur zwei der später sechs Ländern abgeschlossen – unterliegen also weder der Anwendung des Konditionalitätsprinzips, noch haben sie alle Länder unterzeichnet. Anders verhält es sich mit den Stabilisierungs- und Assoziierungsabkommen. Hier finden wir eine erhebliche zeitliche Streuung im Abschlusszeitpunkt – FYROM als erstes Land im April 2001, Bosnien-Herzegowina als letztes Land der Region im Juni 2008. Neben der zeitlichen Varianz zeigt ein Blick auf die Ausgestaltung der Abkommen eine auch inhaltliche Varianz in Bezug auf die im Abkommen festgelegten allgemeinen Grundsätze. So sind in den Abkommen von Bosnien-Herzegowina, Serbien und Montenegro neben der

„essential elements-Klausel“ Zusatzbestimmungen enthalten, welche die vom Rat genannten Bedingungen abdecken. Varianz findet sich ebenso in Bezug auf die Bedingung, regional zu kooperieren. Mit Ausnahme von Kroatien und FYROM haben die anderen vier Unterzeichner Zusatzbestimmungen, die ausschließlich die Bedingung nach regionaler Kooperation berühren. Diese Vergleichsergebnisse lassen noch keinen Rückschluss auf die konsistente Anwendung des Prinzips der Konditionalität zu. Die Erwartung an den Fortgang der Untersuchung zielt vielmehr darauf ab, dass nur das unterschiedliche Erfüllungsverhalten der Länder die Vertragsschlusszeitpunkte und die inhaltlichen Varianz erklären kann. Konsistent angewendet würde nicht vollumfängliche Erfüllung der Bedingungen zu einer strengeren Nachforderung in den Abkommen führen.

Das Kernstück der empirischen Messung liegt in der Fortschrittsbewertung der Länder durch die Europäische Kommission, die in einem jährlich stattfindenden Verfahren die Einhaltung der Bedingungen misst. Der Analysezeitraum reicht vom Beginn des regionalen Politikansatzes 1996 bis zum Abschluss des SAA's mit dem jeweiligen Land der Region. Mit dieser Zäsur soll das Erfüllungsverhalten des einzelnen Landes einen Vergleich zu verschiedenen Belohnungspunkten gewährleisten.

Wir stellen fest, dass die Kommission selbst nicht alle Bedingungen gleichermaßen kommentiert. Im zeitlichen und räumlichen Vergleich für alle Länder ist eine starke Streuung zu konstatieren: während einige Bedingungen stets Bestandteil der Feststellung des Erfüllungsverhalten sind (z.B. „separation of powers“), werden andere Bedingungen nie auch nur erwähnt („right to privacy, family, home and correspondence“). Die für Indikator I festgestellte variierende Klarheit einzelner Bedingungen schlägt sich auch auf die Fortschrittsbewertung der Kommission nieder: während einzelne Bedingungen erfüllt oder nicht erfüllt sein können (z.B. „elections free and fair“), fehlen bei anderen präzise Bewertungsdimensionen, besonders bei „government and authorities act consistent with the constitution“. In der Auswertung der einzelnen Kommissionsberichte wurde festgestellt, dass je geringer das Erfüllungsverhalten des bewerteten Landes, desto stärker orientierte sich die Fortschrittsbewertung anhand länderspezifischer Gegebenheiten, statt am Gehalt der gesetzten Bedingung. Dieses Vorgehen ist einerseits konsistent mit dem Ansatz der Kommission, länderspezifisch vorgehen zu wollen, um etwaige Heterogenität innerhalb der Länder zu würdigen. Es ist hingegen inkonsistent, das Erfüllungsverhalten in Abkehr einer klar definierten Bedingung einzig an nationalstaatlichen Gegebenheiten zu orientieren. Bei

Ländern, deren Erfüllungsverhalten allgemein als gering im Ländervergleich gelten muss, hielten zudem Unter-Bedingungen Einzug in die Fortschrittsbewertung der Kommission. Mit diesem Vorgehen sollte den Ländern geholfen werden, die sich mit einer Einhaltung bestimmter Bedingungen schwer taten. Hierin werden Schwächen in der Setzung der Bedingungen gleichsam ausgebügelt, steigern also die „determinacy of conditions“, weichen aber die Grundannahme auf. Schließlich ergab der Vergleich des festgestellten Erfüllungsverhaltens zu den einzelnen Belohnungszeitpunkten wiederum eine erhebliche Streuung: der Empfehlung der Kommission an den Rat, die bilateralen Vertragsbeziehungen zu intensivieren, geht keine vollumfängliche Erfüllung der gesetzten Bedingungen voraus. Das zum Belohnungszeitpunkt festgestellte Erfüllungsverhalten variiert zudem im Ländervergleich zu stark, als dass eine Schwelle erkannt werden könnte, die mindestens notwendig ist, um das gemachte Versprechen einzulösen.

Diese Aussage wird durch die Messung des Indikators IV in Kapitel 7 gezeigt: Die für die vorherigen Indikatoren festgestellte Streuung ist auch für die Fortentwicklung bilateraler Vertragsbeziehungen durch den Rat zu konstatieren. Die Analyse für Albanien und FYROM zeigt am ehesten eine konsistente Anwendung, als dass das von der Kommission festgestellte Erfüllungsverhalten sich verbessert, je näher die versprochene Belohnung rückt. FYROM ist zudem der einzige Fall in der Region, bei dem sich in der Fortschrittsbewertung der Kommission keine explizite Nichteinhaltung von Bedingungen findet. Gleichzeitig ist aber die Gesamtzahl der bewerteten Bedingungen geringer als im Vergleich zu den Nachbarländern. Bosnien-Herzegowina präsentiert den umgekehrten Fall: Die Anzahl explizit festgestellter Nichteinhaltung von Bedingungen nimmt zu, je näher die versprochene Belohnung rückt. Gleichzeitig ist die Zahl der explizit bewerteten Bedingungen in diesem Falle hoch, was die Inkonsistenz weiter verstärkt. Während also die Einhaltung der Bedingungen im Falle FYROMs und Albanien noch als hinreichende Bedingung aufgefasst werden kann, erlangen Bosnien-Herzegowina, Serbien, Montenegro und Kroatien die versprochene Belohnung, obwohl sie die Bedingungen nicht einhalten.

Im Ergebnis der empirischen Messung der Anwendung des Konditionalitätsprinzips steht die nachgewiesene Inkonsistenz. Wenngleich die Indikatoren zum Teil deduktiv gewonnen wurden, lässt das hiesige Forschungsdesign lediglich theoretische Implikationen anstelle einer vollständigen Erklärung der Ergebnisse zu. Mit Blick auf das Setzen der Bedingungen muss konstatiert werden, dass je entfernter ein Land von deren Einhaltung, desto notwendiger ist

die Einführung von Zwischenschritten. Aus der Literatur ist zweifelsfrei bekannt, dass die Wahrscheinlichkeit einer Regeleinhaltung eben auch von innerstaatlichen Bedingungen abhängt. Wo unpräzise Bedingungen aufgeweicht werden und vor dem Hintergrund des innerstaatlichen Zustands definiert werden, sinkt die „determinacy of conditions“. Wenn nicht die Regeleinhaltung die Fortentwicklung bilateraler Vertragsbeziehungen erklärt, dann kommen interne EU Faktoren als erklärende Variablen in Betracht. Warum weichen Kommission und Rat von einer konsistenten Anwendung ab? Die Beantwortung dieser Frage reicht über den Rahmen dieser Arbeit hinaus. Im Schluss steht zu konstatieren, dass die Idee des Verdienstadels („meritocracy“) – wo Taten nur dann folgen, wenn Versprechen gehalten wurden – für die Westbalkanländer keine Erklärungskraft beanspruchen kann.

English

This dissertation is a piece of empirical research describing the application of the conditionality principle in the EU's contractual relations with the countries of former Yugoslavia except Slovenia and Albania. The research question asks for consistent application of the conditionality principle as the decisive cornerstone of the EU's policy approach applied between 1996 and 2010. It is inspired by existing theoretical research that presents diverging argument on whether or not the principle is applied consistently. To date, comparative over-time descriptive analysis on the application of conditionality is missing. There is, however, a bunch of literature studying the effects conditionality unveils on the partner country's domestic grounds measuring actual rule transfer taking place or not.

This theoretical proposition frames the analysis. Assuming a rational logic of consequence, a direct impact using incentives and the compliance mode of governance, the project departs from Vachudová holding that a country's position in the queue to membership reflects its success in meeting the EU's requirements. It conceptualizes the evolution of bilateral contractual relations as a strategy of rewarding progress on the third countries domestic grounds. Empirically, the study grasps the EU's policy frameworks towards the Western Balkans or Former Yugoslavia and Albania and the agreements offered within these. In doing so, the research question seeks to correlate the variation in concluding bilateral contractual relations and will thus focus on the in-between relationship between the EU as an institution and the states as the ones being influenced. The focus is neither on the impact of this external influence, nor is it on how the transformation process within the countries themselves backfires on the policy production. It rather takes the policy design as a given and zooms into the implementation, namely how exactly the EU exerts its capacities to monitor the country's performance in light of conditions set for the intensification of contractual relations.

As a topic, „it [conditionality – P.L.] remains insufficiently studied and has generated little policy-making and academic debate” (Anastasakis/Bechev 2003: 2). It is the dissertations foremost objective to contribute to this debate by presenting empirical evidence on the application of conditionality.

The research design comforts the descriptive interest in empirically measuring whether or not conditionality is applied consistently. The nexus between advancement of bilateral contractual relations and the partner countries domestic status quo has widely been studied. The general

assumption is that compliance with EU requirements leads to progress in contractual relations that might ultimately allow for the country's accession as a full member. The advancement of establishing bilateral contractual relations shows a temporal variation across the countries of the Western Balkans. In line with the aforementioned theoretical propositions, variation is a result of variation regarding the fulfillment of conditions. The observation of temporal variation in granting the promised rewards consequently carries no inference on the consistent application of conditionality. The puzzling aspect in this observation rests on well-established theoretical propositions that assume a logic of meritocracy: If the rewarding scheme of the EU would indeed be meritocratic then one would observe the consecutive conclusion of one agreement after the other based on the assumption that the country's compliance leads to the improvement that is assessed as sufficient moving the country a step further in the levels of approximation (one-size-fits-all). Given that domestic conditions of the partner countries may vary, the different speeds in concluding agreements are not surprising. The analysis does not arrive at providing a sound explanation as to what accounts for the application of conditionality: the value of the dissertation is measuring the concept of conditionality in a comparative fashion.

The 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: Regarding both number and scope of the various requirements it is fair to state that conditionality vis-à-vis the Western Balkans is of "multi-dimensional nature" (Anastasakis und Bechev 2003: 8). Regarding the determinacy of conditions, I found various sets of conditions at work simultaneously: First, the conditions arising out of the peace agreements and political deals such as Res. 1244 UN SC or Dayton Framework Agreement for Peace, the Ohrid or the Belgrade Agreement. Second, those conditions presented 1997 when the Regional Approach was launched as well as those of 1999 following the presentation of the SAP. Thirdly, individual countries received specific conditions applying to the specific domestic status quo. And fourthly, the countries were presented the Copenhagen or accession criteria once the European Council granted a potential membership status in 1999. It seems impossible to disentangle the various sets of external incentives that are at work simultaneously. It follows from the analysis of indicator I that the advancement of institutionalized cooperation taking the form of bilateral agreements is indeed made conditional. Chapter four on the outcome

suggested that over time, carrots grew more attractive. It is however problematic to make a sharp cut as to when the subsequent set of requirements renders its predecessor irrelevant.

The point to be made is that conditions are not designed equally for all countries that maintain relations with the EU as non-members. On the contrary, the principle reveals distinctive features that may not be found in other regions: the first and most obvious one is that the EU operates with two sets of conditions in its regional approach: general and specific conditions. Secondly, the approach is a graduated one, where the beginning of negotiations for an agreement demand less compliance with conditions set than the actual conclusion. Thirdly, compared to the countries of Central and Eastern Europe, the set of conditions for the Western Balkans is generally exceptionally broad when it comes to political and economic conditions.

In line with the reinforcement by reward hypothesis and Schimmelfennig's argument of increasing size, speed and credibility of the incentive set, this section showed that incentives were indeed upgraded during the observation period. This upgrade however was conducted regardless of whether or not the next available threshold was in sight. Countries that would not conclude Cooperation Agreements between 1996 and 1999 would certainly not meet more demanding conditions than those of the SAP. Consistent application demands a crisp set of conditions to be set by the Council for each distinct step of rewarding, notably the conclusion of bilateral contractual relations between the EU and the respective country. Instead, the set of conditions is rather fuzzy than crisp and as of 2004 silently reflects the Copenhagen criteria in pure form, even though BiH, Serbia or Montenegro did not even maintain any contractual relations at this point in time. Incentives set by setting conditions is thus inconsistent with the reinforcement by reward hypothesis, as conditions vary, both over time and across countries as well as for each type of agreement. In the absence of clearly defined benchmarks, the notion of gradual rewarding further contradicts consistent application of conditionality.

If the outcome in bilateral contractual relations shows variation as well as the setting of conditions vis-à-vis the Western Balkans, the test for consistent application subsequently rests with the Commission's monitoring of compliance and the respective recommendations to the Council to proceed with establishing or upgrading relations. Even if there are no public benchmarks the analysis of the Commission's efforts should reveal that levels of compliance reached by those that were frontrunners in concluding agreements later served as such vis-à-vis neighboring countries.

In sum, the empirical analysis of indicators II and III does not argue for consistent application of conditionality. If domestic conditions influence the monitoring practice, the merit-based approach underlying the concept of conditionality evaporates. Consistent application of conditionality has been tested for indicator II and III alike on three levels: first, it has been showed that the very number of conditions explicitly mentioned varied over time within a country as well as across countries. Second, in the absence of a crisp meaning of each of the verifiable elements it could be shown that each item is measured against the domestic status quo. This idea is consistent with the Commission's claim to account for heterogeneous domestic conditions but runs counter to the idea of a merit-based approach that rewards compliant behavior. Adding to this is the finding of sub-conditions being introduced alongside the Council's list once statehood is not guaranteeing self-sustainability, as in the case of BiH and the former State Union. Third, combining indicators II and III showed that the recommendation to open negotiations is not based on finding progress beforehand. The claim of "sufficient progress" could not be filled with substantial meaning in a cross-country comparison.

The correlation between indicators II and IV strengthened the argument of inconsistent application of conditionality presented in the two preceding chapters. Inconsistency builds on the fact that not all countries receive identical conditions, not all items on the Council's list of requirements were actually monitored, monitoring further varied over time and across countries and finally, shifting the focus towards the conclusion of an SAA, I found that cases of non-fulfillment of requirements are rewarded: BiH's performance in meeting the conditions changes for the worse throughout the Commission's recommendation, the beginning of negotiations and the SAA conclusions. For Serbia and Montenegro, there is an improvement but against a very low level of performance that does not even include fulfillment of the set of special conditions. The Croatian case is inconsistent on two levels: firstly, by rewarding the country with an SAA the Council waters down the sequential logic regardless of the Commission's finding that ICTY cooperation is uneven. Secondly, the country's performance in meeting the requirements is generally low. Albania and FYROM present two cases that fit best with the idea of consistent application: they show the best performance across the region while Albania's table illustrates the sequential logic of constant improvement prior the actual conclusion of an agreement. Following the Commission's logic of consistent application of conditionality over time and across the region, the correlation of

indicators I to IV alone argue for inconsistent application: fulfillment of conditions is at best a sufficient condition in the case of FYROM and Albania. BiH, S&M as well as Croatia, however, are rewarded despite the non-fulfillment of conditions.

The research design is limited to measuring the application of conditionality. Honoring the descriptive interest in the topic, the results carry theoretical implications. If the EU believes in the attractiveness of its rewards with full membership being the top reward to be earned it should not silently water down the credibility of threats and promises. The application of conditionality to date is clearly focused on the incentives aspect rather than applying means to overcome the domestic hurdles that hinder compliance in the first place. The SAAs were meant as Europe Agreements light as to prevent any aspirations for a short-cut route to enlargements. Once even optimists realized that quick results did not materialize, the Union put the enlargement perspective on the table despite the fact that some of the countries simple were incapable to deliver on the Council's list of compliance. If it is not the fulfillment of conditions as shown in this dissertation, it is intra EU factors. The endeavor to develop a full-fledged explanation accounting for this study's results is left to the research community. It is however safe to contend that the meritocracy argument – where deeds are matched to words – lost its explanatory power in the Western Balkans long ago.

Vorveröffentlichungen

None

Curriculum Vitae

~ Aus Gründen des Datenschutzes wird in der Online-Version der Lebenslauf nicht veröffentlicht. ~

