

# EU Conditionality: An Effective Means for Policy Reform?

Written by Elyse Wakelin

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ELYSE WAKELIN, NOV 1 2013

The ability of the European Union to influence aspiring member states to make the necessary reforms to create domestic policy and institutions that are both stable and strong enough for membership is essential to a successful enlargement programme. The key tool at the disposal of the EU to encourage and ensure compliance is EU conditionality. This article seeks to analyse the effectiveness of EU conditionality through the Accession Partnerships as developed during the Central and Eastern European Countries enlargement, with the case study of Latvia's minority rights reforms. This will be compared to the Stabilisation and Association Partnerships (SAP) that were developed during the Balkan states journey to Europe, looking Bosnia and Herzegovina's (BiH) police reforms. The External Incentives Model will serve as a signpost for effective EU conditionality, with each case study to be analysed for its fulfilment of the conditions for this model, along with the practical impact of EU conditionality has to date, had in these cases. The article will propose that the effectiveness of EU conditionality as a tool to engage with policy reform in aspiring states has dramatically reduced following the 2004 and 2007 rounds of enlargements, the conditions in remaining aspiring state found predominantly in the Balkans, are not conducive to successful EU conditionality.

The External Incentives Model<sup>[1]</sup> of EU conditionality is based upon the rationalist bargaining mode, whereby actors are assumed to seek the maximization of their own power and welfare; "In the bargaining process, they exchange information, threats and promises; its outcome depends on their relative bargaining power"<sup>[2]</sup>. The External Incentive Model proposes that the EU sets conditions which aspiring members must fulfill in order to receive the reward of EU membership status<sup>[3]</sup>, with the strength of this model determined by the fulfillment of the following conditions<sup>[4]</sup>; adoption costs; determinacy of conditions; size and speed of reward; and credibility of conditionality which will be considered in turn.

According to the External Incentives model, adoption costs affect the success of EU conditionality. Adoption costs occur in the form of forgoing alternative rewards offered by adopting rules other than EU rules, welfare or power costs for private and public actors<sup>[5]</sup>. Adoption costs are both financial and the impact that adoption has upon a government, such as an effect on the likelihood of re-election. These costs are, in theory, balanced by the benefits of EU rewards. However, if the government of other actors whose agreement is necessary to change the Status quo (veto players) deem the cost too high, it is unlikely that there will be compliance as likelihood of rule adoption decreases with the number of veto players incurring net adoption costs from compliance<sup>[6]</sup>. Therefore, the lower the adoption costs the more possibility of compliance with EU conditionality.

In relation to the determinacy of conditions, the External Incentives Model relies upon the 'carrot and stick' approach to explain EU conditionality, proposing that rules must be used as conditions for reward. In the case of EU conditionality, fulfilling these conditions may lead to the reward of membership. The determinacy hypothesis suggests the effectiveness of rule transfer increases if rules are set as conditions for rewards and the more determine they are<sup>[7]</sup>. In order for EU conditionality to be successful, the EU must provide clear and precise conditions and associated rewards and is undermined by the 'moving target' and undetermined rewards.

The External Incentives Model contends that the effectiveness of rule transfer increases with the size and speed of rewards<sup>[8]</sup>. Thus, the non-Member state will take greater actions to ensure rule transfer when the reward for

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compliance is powerful enough, that is, on the promise of membership which is to be delivered in a timely fashion. Thus, EU conditionality will be more effective the quicker the reward of membership is offered to an aspiring member state in compliance with conditions set by the EU.

Finally, the External Incentives Model provides that the likelihood of rule adoption increases with the credibility of conditional threats and promises<sup>[9]</sup>. The EU must be able to withhold rewards from states at minimal cost to itself. In 1997, the EU used this condition to exclude Slovakia from the first round of negotiations as the only candidate country not to meet the democracy criteria<sup>[10]</sup>. The ability to withhold rewards for non-compliance is essential to EU Conditionality, as without it, states have no incentive to make the required reforms as they may still benefit from the rewards.

This is supported by evidence that “the conditional incentive of EU membership was the main force driving the incorporation.... rather than an alternative process such as persuasion, identification or social learning”<sup>[11]</sup> in the 2004 and 2007 enlargements. However, Rupnik suggests, EU conditionality’s success “depends on achieving cognitive and behavioural change” and “without a change in political culture, the formal adoption of institutions or norms can merely create an empty shell and possibly undermine the EU from within”<sup>[12]</sup>.

The case study of Latvia supports EU conditionality with the minority right reforms in the country resulting from and constitutional changes that occurred as a result of EU conditionality through the Accession Partnerships This supports Sasse’s (2008) claims that “Latvia is the strongest test case for the EU’s ability to assert direct influence and encourage the adoption of an EU-promoted norm associated with democratic conditionality”<sup>[13]</sup> and requires further examination. The Minority issues in Latvia are a result of the 1940 Soviet Occupation, which increased the number of Russian minorities in the country to constitute between 48%<sup>[14]</sup> and 42%<sup>[15]</sup> of the population.

Following independence in 1990, the government only automatically granted Latvian citizenship to residents who were citizens prior to 1940 and their descendants, as well as enacting laws on the use of the Latvian Language, education and economic rights which indirectly discriminated against the non-Latvian population<sup>[16]</sup>. Furthermore, the naturalisation process for Russian Minorities required individuals to pass tests in state language, history and the constitution and have sixteen years residency. A window system was developed, limiting the number of applications permitted each year<sup>[17]</sup>. It was devised to prevent a flood of applications for citizenship and to relieve pressure on the fragile infrastructure of the newly independent state.

The Accession Partnership of Latvia stated that reform of these provisions was a condition for membership. In June 1998, the Latvian parliament passed amendments to the citizenship law, which was shortly followed by a successful referendum in October 1998 abolishing the ‘window’ system and confirming the right of children of non-citizens to obtain citizenship<sup>[18]</sup>. The changes to the Citizenship Law occurred in Latvia after overcoming domestic opposition to the reforms. Kelley (2004) suggests that EU membership was the key impetus for a change towards minority- friendly legislation, concluding that only membership conditionality had the capacity to overcome domestic opposition<sup>[19]</sup>. Furthermore, Schimmelfennig et al (2003) state “only when the demands of the High Commissioner on National Minorities were linked to Latvia’s accession....did the Latvian government and parliament reluctantly give in to international conditions”<sup>[20]</sup>.

It is bold to claim that EU conditionality in Latvia was a complete success. The Language law provides that the use of the Latvian language remains mandatory in the private sector, as a direct response to feelings amongst Latvians that they were placed in an adverse economic position as the Russian language had dominated the economy and administration for decades<sup>[21]</sup>. The law itself remains an indirectly discriminatory against Russian minorities and demonstrates the Latvian government’s willingness to undermine EU conditionality.

Furthermore, Latvia’s refusal to ratify the Framework Convention on National Minorities prior to accession demonstrates the lack of importance placed on minority issues by the Latvian government. Moreover, 2003 reports stated that Latvia still had important short fallings in terms of incorporating the full *acquis* and Latvia was encouraged to accelerate the speed of the naturalisation procedures and promote the integration of the Russian minority<sup>[22]</sup>, which were still not meeting the required European level. It is possible to conclude that “while Latvia followed the demands

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of the EU, the primary aim of EU conditions, full integration of all Russian speakers remains unfulfilled<sup>[23]</sup>.

It has emerged that no checks and balances were in place to ensure that the changes made to minority rights through the Accession Partnerships had any real impact on the ground. Mungiu-Pippidi (2007) has likened the monitoring to a Doctor, suggesting that “It is as if a doctor evaluated a patient by the number of prescribed medicines, rather than by measuring the patient’s fever to check on the effect of the medicines”<sup>[24]</sup>. Furthermore, Commission officials admit they were sometimes too naïve in being impressed by the adoption of legislation and that they should have looked more at the reality on the ground<sup>[25]</sup>. It is evident that the Commission assumed that Latvia reforming the legislation would have a positive impact. The reforms were never assessed for actual effect on minority rights, which has been suggested to have remained the same if not reduced since Latvia gained membership status<sup>[26]</sup>.

EU conditionality in Bosnia and Herzegovina (BiH) had limited success through the Stabilization and Association Partnership (SAP) with tension-ridden ethnic relations cited as the principle cause of limited success of conditionality, with suggestions that EU conditionality has been met with inertia and caused deterioration in ethnic relations<sup>[27]</sup>. According to the External Incentives Model, the cost-benefit assessment does not suggest an effective environment for EU conditionality in BiH. The perceived value of membership is considered lower than the value of maintaining the current status quo of ethnic relations<sup>[28]</sup>, leading to limited effectiveness of EU conditionality, as demonstrated by the attempts to use EU conditionality in police reforms.

In 2005, the European Commission informed BiH that police reforms were a necessary condition of the SAP[i]. The required reforms included a relocation of budgetary and legislative decisions to state level, redrawing policing districts on technical grounds and elimination of political interference<sup>[29]</sup>. Whilst a number of reforms were proposed, any initiative failed. The reward of membership did not balance the loss of exclusive control of their own police in the eyes of the Bosnian Leaders, especially in the case of the Bosnian Serbs who were not willing to lose exclusive control of the Republika Sparska police<sup>[30]</sup>. EU membership failed to entice Bosnian politicians to make the necessary reforms as ethnic tensions were stronger than any EU incentive. Europe failed to acknowledge how deep the ethnic tensions in the country were rooted and made no account for this in their reform efforts.

The 2008 progress report stated that Bosnian “behaviour was not compatible with European values and that it jeopardised their EU perspective”<sup>[31]</sup>, an opinion that has been repeated in subsequent reports. The SAP and the tailored conditions for BiH demonstrate that the EU clearly identified its concerns for the country and offered its solution the situation. However, EU conditionality will not be effective in the current climate. Whilst the EU has attempted to alter the quality of the ethnic leader’s interactions with one another, the incentives failed to present themselves as a powerful antidote to unruly conduct among ethnic leaders<sup>[32]</sup>. This is seen in the current attempts to find a solution to the judgement of the minority rights case of *Sejdic v Finci*[33], in which the ethnic leaders have thus far failed to reach an agreement in how to implement the ruling. Until the leading parties are willing to compromise and work together to find a solution, the necessary reforms are not possible pushing European Membership further away.

According to Borzel and Risse (2004), “EU membership has not motivated Balkan leaders very strongly to undertake the necessary reforms as was the case in CEE where regime transformation had been peaceful”<sup>[34]</sup>. The EU involvement has added further layers to the turbulent political conditions in the region, by requiring additional conditions and criteria to already politically weak counties. This raises questions to the credibility of a reform programme that has the potential to further de-stabilise a country. The EU has wrongly assumed that the institutions in each state of the region can be strengthened and ‘Europeanized’ in a single framework. The SAPS have proven to be insufficient to overcome the aftermath of the wars in each state and unable to facilitate a shift towards a greater emphasis on association and integration<sup>[35]</sup>.

To conclude, whilst the SAP was developed in response to the weakness of the Accession Partnerships, neither mechanism has proven entirely effective in ensuring compliance with general EU requirements. Both mechanisms have suffered from a lack of clarity and vague definitions making it difficult to determine the necessary reforms, a lack of clear benchmarks and ineffective monitoring systems. However, the case study of Latvia has demonstrated the success of EU Conditionality through the Accession Partnerships in the area of minority rights, often being cited as

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the most successful example of EU conditionality<sup>[36]</sup>. According to the External Incentives Model, the conditions in Latvia were favourable for effective EU conditionality; domestic adoption costs<sup>[37]</sup> were low and the conditions referred only to a single policy issue rather than fundamental political practices<sup>[37]</sup>. Furthermore, the Latvian elite felt threatened by Russia and regarded European integration as a guarantee of Latvian independence<sup>[38]</sup> as well as the potentially high gains in political security and autonomy resulting in clearly positive net political benefits of compliance<sup>[39]</sup>. This combination of conditions provided for effective conditionality. However, there have been questions raised in regards to its post-accession compliance, with Minority rights for the Russian minority population still highlighted as a cause for concern in Latvia.

Moreover, the SAP has not been successful in ensuring reform in the Western Balkans. To date, the only state to have gained membership status is Croatia<sup>[40]</sup>, and the difficulties faced in achieving domestic reform in BiH highlights the resistance that EU conditionality is facing in the region. Tension-ridden ethnic relations cited as the principle cause of limited success of membership conditionality in Bosnia and Herzegovina. According to the External Incentives Model, in Bosnia and Herzegovina, the cost-benefit assessment does not suggest an effective environment for EU conditionality. The perceived value of eventual membership is considered lower than the value of maintaining the current status quo of ethnic relations<sup>[41]</sup>, leading to limited effectiveness of EU conditionality to ensure reform of any type, as demonstrated by the attempts of the EU to use conditionality to reform the police system.

The SAP has attempted to create a tailored programme of reform for the region but has failed to acknowledge the distinct needs of each state within the region. However, the weaknesses of the SAP and its limited success in encouraging reform would indicate that the EU's ability to influence aspiring states has reduced since the 2004 and 2007 enlargements. At present it is not possible to assess the effectiveness of the SAP at ensuring post-accession compliance; It is necessary to allow some time to pass following the accession of Croatia into the EU in July 2013, to determine how successful the SAP is at ensuring compliance with EU norms.

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

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