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# Does Speed Matter? The Impact of the EU Membership Incentive on Rule Adoption in Minority Rights Legislation

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## Abstract

*Based on the External Incentives Model of Governance, this hypothesis-testing article seeks to explain how effective the EU membership incentive is on recipient states' propensity to comply with EU minority rights conditionality. More specifically this is done by examining what impact the temporal distance of the prospective EU membership reward has on the level of adopted legislation in the area of non-discrimination legislation in the recipient states, on track of EU accession. Methodologically, the study is based on a comparative approach, both in terms of the time frame of the analysis, confined to 2003 – 2010, but also in terms of the selection of the recipient states, forming the empirical base. On the basis of the most similar systems design, the states are categorized into three groups according to their temporal distance to the prospective EU membership reward. The hypothesis being tested is: the closer the recipient states are to the prospective EU membership reward, the higher the adaptation pressure, and the more likely the level of adopted legislation would be high. The study shows that the hypothesis is only partly confirmed. The results show that the relationship between temporal distance and level of legislation in non-discrimination has increased significantly during the period studied. This relationship was however only strengthened between the category of states, temporally the furthest away from a potential EU membership and the two categories that are closer or closest to a potential EU membership.*

**KEY WORDS:** Non-discrimination, Temporal Dimension, External Incentives Model of Governance, ENP-conditionality, SAp-conditionality

## Introduction

At the beginning of the 1990s European organisations responded to the violent ethnic conflicts in the Balkans and in the Caucasus by elevating minority rights protection to “a matter of legitimate international concern...” as articulated by the OSCE Copenhagen Declaration of 1990. (Kymlicka 2007: 173) Hence, minority rights protection would no longer constitute an exclusively internal affair of the respective States but would increasingly become part of a responsibility of the international community. In 1993, and in view of the big bang enlargement of 2004, minority rights protection was integrated into the Copenhagen criteria making it conditional upon EU membership.<sup>1</sup>

The success associated with pre-conditionality, as an effective tool of domestic change, both in terms of securing internal stability, as well as external, would contribute to both its broadening as

well as its deepening. The broadening would entail that conditionality was to develop into a tool for providing guarantees of stability, not only to the candidate states of the EU, but also to the states not directly linked to enlargement. In fact, with the introduction of the European Neighbourhood Policy (ENP) in 2004, the strategy of conditionality was introduced to the Eastern European neighbours as well as to the adjoining states of the Union's Southern periphery. The deepening of conditionality, and the greater emphasis put on minority rights conditionality, was introduced with the prospect of integrating the states of the Western Balkans into the structures of the Union, launched in 2000 with the signing of the Stabilisation and Association Process (SAP).

Both SAP- and ENP-conditionality, at least as concerns the Eastern European neighbours, are based on the same legal and political underpinnings as pre-accession conditionality, which in turn is based on a highly extensive body of norms and rules. Although all conditionality packages form part of the enlargement policy, there are some notable differences. Contrary to pre-accession conditionality, which meant that the candidate states' compliance was automatically linked to EU membership, neither SAP-conditionality nor ENP-conditionality has that in-built automaticity. Second, and as a lesson drawn from the Eastern enlargement round, was to retain the "principle of differentiation", both in terms of the conditions set, as well as in terms of the rewards granted. (Kelley 2006: 49) This became particularly manifest in SAP-conditionality, which became based on a graduated approach, i.e. the categorization of recipient states into candidate states and potential candidate states.

The enlargement policy has been acclaimed as EUs most successful foreign policy, which, in turn, has resulted in a situation where there seems to be almost a consensual understanding that the EU exerts strong and multifaceted influence on states on track of EU accession. (Keukelaire & MacNaughtan 2008: 228) Also, minority rights conditionality has often been "singled out as a prime example of the EU's positive impact on democracy in Central and Eastern Europe" (Sasse 2008: 842). In the Europeanisation and diffusion literature, studies on the efficiency of the membership incentive and its impact on norm compliance in the area of minority rights conditionality have been scarce. In research within the framework of the *External Incentives Model of Governance*, which in turn is based on the strategy of reinforcement by reward, results have shown that the size and speed of reward dimension is an effective incentive for norm compliance. (Schimmelfennig et al. 2002; Schimmelfennig & Sedelmeier 2002; Schimmelfennig 2003; Schimmelfennig & Schwellnus 2006; Kelley 2004) However, since these studies have largely been limited to the candidate states of Central and Eastern Europe (CEEs), which were at least initially assumed to acquire EU membership at the same time, the explanatory power of the speed dimension has never been properly investigated, since it has always been overshadowed by the size of reward dimension. Furthermore, in the former candidate states, the explicit promise of the EU membership can be argued to have been a forceful incentive for norm compliance. Also, even though the deadline for accession was not stated until late in the accession negotiations, it has been argued that the timetables set by the EU Commission or the "instruments of temporality played a key role in driving institutional action and political decisions in the process of expansion of the EU" (Avery 2009: 256).

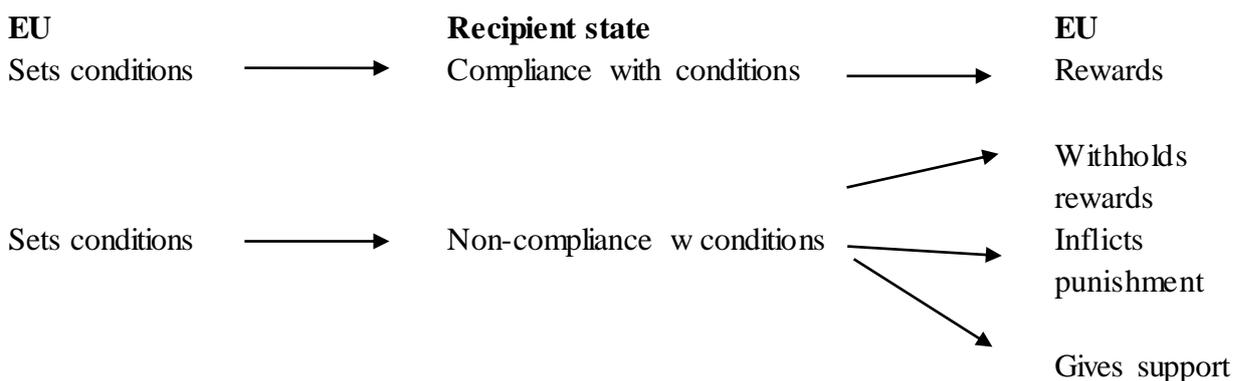
However, since no systematic analysis has been carried out as to how the "instruments of temporality" of the membership incentive in fact impacts on norm compliance in the area of minority rights conditionality, in states "on track" of EU accession, but with neither explicit promise of EU membership, nor any specified temporal location associated with it, one can only speculate on its effectiveness.

The following paper is part of the research that I have been conducting on the efficiency of EU minority rights conditionality. Based on the *External Incentives Model of Governance*, this hypothesis-testing article seeks to explain how effective the EU membership incentive is on recipient states' propensity to comply with EU minority rights conditionality. More specifically this is done by examining what impact the temporal distance of the prospective EU membership reward has on the level of adopted legislation in the area of minority rights pertaining to non-discrimination in states currently on track of EU accession. The first part of the paper is devoted to a theoretical and methodological discussion on the implications of integrating the temporal dimension as an explanatory factor in the study of the efficiency of the EU membership incentive and its impact on norm compliance. The second part discusses the empirical knowledge gained from the study.

### The speed of reward hypothesis in research on the efficiency of the membership incentive in the conditionality-compliance process

Based on the *External Incentives Model of Governance*, this investigation departs from a rationalist account of international relations which assumes that actors are rational and driven by a motivation to act to maximise their power and welfare. The most general proposition of the *External Incentives Model of Governance*, based on the strategy of reinforcement by reward, is that based on the reward incentive, recipient states choose to comply with EU rules and norms set as conditions if the benefits to be had are calculated as exceeding the domestic costs to be paid. Thus, the bigger the prospective rewards the more likely recipient states are to comply with EU conditionality.

*Fig. 1 Strategies of conditionality* (Schimmelfennig et al. 2002: 3)



Rewards can be both social (pertaining to the normative power of the EU) as well as material and political (financial assistance, trade relations and institutional ties). The study at hand only concerns itself with the latter. Material and political rewards can come as two kinds of benefits, namely assistance and institutional ties. Assistance can be both technical and financial in nature and mostly come as EU-funding of different projects and establishment of EU trade relations with the recipient states. These are furthermore normally established as a way of facilitating recipient

states' compliance with EU political conditionality. Institutional ties come in the form of different trade and cooperation agreements which later are followed by association agreements. The next stage of the association agreements is accession agreements which are automatically expected to lead to full EU-membership. EU-membership is the ultimate and strongest institutional tie.

The temporal dimension in research on European governance has been almost non-existent up until recently. Apart from research by Ekengren who has investigated the social construction of temporality in European governance (Ekengren 2009), little has been done in research pertaining to EU political conditionality and what impact the temporal dimension has on norm compliance. The little focus on the temporal dimension is remarkable in view of the fact that the entire EU project is a constantly moving colossus, sometimes moving in an *ad hoc* unpredictable fashion, both in terms of an evolving integration process but also in terms of the gradual process of enlargement.

According to Ekengren, the reference to the EU as a project is mainly explained by the "significant lack of actual experience that characterises the European governance language" which entails that the project is constantly referred to as being based on the present. (Ekengren 2009: 49) At the same time the "temporalisation process prevails owing to the fact that the pure forms of European political processes and decision-making are expected to develop at an accelerating tempo. The 'project' in European governance made an empty vehicle for political movement" (Ekengren 2009: 49). This "vehicle for political movement" can be seen both in the evolving integration process but is particularly blatant in the enlargement process which can be conceived as a gradual process on the basis of which the dynamic process of conditionality-compliance is closely anchored.

On the basis of the research conducted by Santiso and Schmitter, Goetz et al. dedicate an entire issue of *Journal of European Public Policy* 16 (2) in 2009 to political time, claiming that this ignored dimension in the study of European governance is in fact crucial to understanding not only how something happened by also why it happened. Goetz and Meyer-Sahling treat time as an institution and on the basis of the three dimensions developed by Schmitter and Santiso (Schmitter & Santiso 199: 69), they argue that the policy cycle is made up of four different temporal categories: the temporal location (when something happens); the sequence (in what order things happen); speed (how quickly things happen); and duration (how long things take) (Goetz & Meyer-Sahling 2009: 180-182).

Timing is also raised by Grabbe as constituting one dimension of uncertainty in the conditionality process having an impact on the cost-benefit calculations as regards adoption costs of compliance in relation to future benefits. Since the "ultimate reward of accession is far removed from the moment at which adaptation costs are incurred, so conditionality is a blunt instrument when it comes to persuading countries to change particular practices" (Grabbe in Featherstone & Radaelli 2003: 320). Hence, even though it is assumed that the nearer recipient states are to prospective benefits, "temporal devices", especially timetables with fixed dates and sequences have been argued to be effective instruments of compliance. Although temporal devices are presumably more important in cases where "there is a long time gap between action and likely effects" which Goetz labels "transtemporal policy problems" (Goetz 2009: 208), they are argued to be important devices also as regards creating "temporal consistency", in states which have a shorter trajectory to prospective benefits. On the other hand, Avery has argued that timetables and the setting of dates can have negative effects on compliance and policy change since this could cause "an applicant country to relax, while uncertainty would cause it to try harder to meet the EU requirements" (Avery 2009: 262). However, at the same time, in the negotiations leading up to

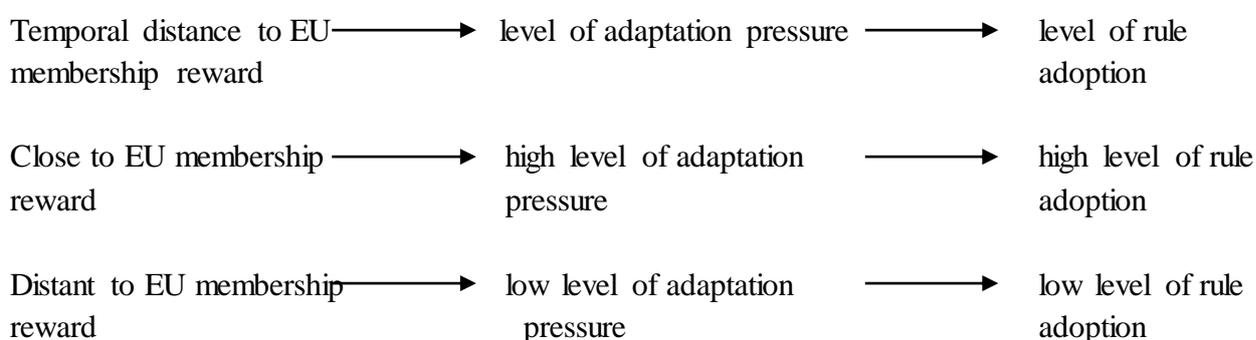
accessions in 2004 and 2007, candidate states argued that in the absence of timetables and firm deadlines the EU could not expect domestic ministers and ministries to implement “difficult and costly parts of the *acquis*” (Avery 2009: 262).

The temporal distance to the prospective EU membership reward is then argued to be a strong incentive as to what degree recipient states are willing to comply with EU norms and rules. Based on the rationalist perspective, political time is here conceived of as “temporal institutions (that) act as opportunities and constraints on actors’ strategies, affecting both when and how to act” (Goetz 2009: 193). Another central claim of the study is that “the more Europeanization provides new opportunities and constraints (high adaptational pressure), the more likely a redistribution of resources is, which may alter the domestic balance of power and which may empower domestic actors to effectively mobilize for policy change” (Börzel & Risse in Featherstone & Radaelli 2003: 70).

Another central claim in this study is that there has been an increasing legalisation of international norms and rules which are argued to constitute an important mechanism to make recipient states comply with diffused norms and rules. Legalisation is to be understood as a particular type of institutionalisation, imposing international legal constraints on recipient states thereby facilitating and constraining states into compliance. In this study norm compliance is solely equated with legislation adopted. This consequently entails that the impact of the speed of the prospective EU membership reward is measured against the level of rule adoption in the area of minority rights pertaining to non-discrimination in the recipient states forming the empirical base. This furthermore entails that the level of rule adoption is assumed to vary according to how speedily the prospective EU membership reward is distributed.

Taken in this study, the speed of the prospective EU membership reward is understood as a constraint and an opportunity and is argued to constitute the main driving force of adaptation pressure in the conditionality-compliance process. Following from this it is hypothesised that the nearer recipient states are to the prospective EU membership reward, the higher the adaptation pressure and the more likely the level of rule adoption would be high. Vice versa, the further away the recipient states are from the prospective EU membership reward, the lower the adaptation pressure and the more likely the level of rule adoption would be low.

*Fig. 2 Speed of reward hypothesis and level of rule adoption*



Methodological implications of measuring the impact of the speed dimension on progress in the level of non-discrimination legislation

Methodologically, the research question presupposes a comparative approach, both in terms of the temporal distance to the prospective EU membership reward of the recipient states, but also in terms of the time-frame of the analysis. By using the most similar systems design (MSSD), the selection of states, that constitutes the empirical base, has been made according to a set of similar criteria, considered crucial for the investigation and where the only divergence is the recipient states' temporal distance to the prospective EU membership reward. First, enlargement preferences in each state under investigation are assumed to be strong. Second, the selected states are all European, which means that, in principle, they all qualify for EU-membership. To claim that all states under investigation are European is controversial, since the term European is elastic and pertains not only to geographical delimitations, but also to cultural borders. In fact, whereas it would be unproblematic to label states like Moldova, Ukraine and Belarus as being European, the "European merits of Caucasian states like Georgia, Armenia, and Azerbaijan are more questionable" (Berglund et al. 2009: 70). However, since all states under investigation are part of either SAP-conditionality or ENP-conditionality, and at least as concerns the Eastern European states of ENP-conditionality, could be argued not to be excluded from the European hemisphere, the merits of the Caucasian states in the investigation at hand are argued to qualify as European.

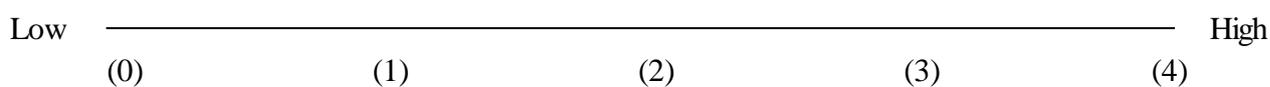
Third, all states are post-communist states, having constituted parts of two larger federal political systems, whose societies are multi-ethnic in character, thus, composed of significant segments of national minorities. Fourth, all states have been involved, to a greater or lesser extent, in violent ethno-political conflicts since the end of the Cold War, and the demise of communism. This means that the selection of states has been based on the criterion that there has to be significant conflict, or policy misfit, between the EU minority rights conditionality and the domestic policies in the respective recipient states, prior to becoming part of EU conditionality. Thus, in the states under investigation, it is assumed that minority rights provisions are generally viewed upon as illegitimate, and that state governments at the receiving end, would not go about changing minority rights policies, if there would not be any EU external incentives. This criterion is deemed crucial for methodological reasons, since it is argued that difficult cases will call for stronger and more visible reactions from the EU. This, in turn, is argued to facilitate the measurement of how the speed of the prospective EU membership reward, in fact, impacts on the progress made in the level of rule adoption, pertaining to the area of non-discrimination in the recipient states. The states under scrutiny, however, differ in one important aspect: how close or distant they are to EU membership. Since the level of rule adoption is assumed to vary in relation to the speed of the prospective EU membership reward, we can categorise the states accordingly.

The first category includes Croatia and Macedonia, states that acquired status as candidate states in 2005 and 2005 respectively. Croatia gained EU membership in July 2013 but since the study of investigation is limited to 2003 and 2010, Croatia was at the time a candidate state to the EU and therefore categorised as such in this study. The second category includes Bosnia and Herzegovina, Kosovo<sup>2</sup> and Serbia<sup>3</sup> which all acquired status as potential candidate states in 2003. The last category includes Azerbaijan, Georgia and Moldova, states which neither are candidate states nor potential candidate states but where a closer cooperation was established with the signing of the European Neighbourhood Policy (ENP) in 2005 (Moldova) and 2006 (Azerbaijan and Georgia). The last category is thus distinct from the first two in that there is no prospect of EU membership, at least not in the foreseeable future.

On the basis of both Dunbar’s categorisation (Dunbar 2001: 91-115), as well as Schwellnus operationalisation of rule adoption (Schwellnus et al. 2009: 6-7), minority rights will be investigated pertaining to non-discrimination. Non-discrimination is a key principle in EU legislation and as part of the *acquis communautaire* legally binding upon member states but also upon applicant states to the EU. By the end of the 1990s when accession negotiations were to start with the Central and Eastern European states the non-discrimination norm was extended to the minority relevant area with the addition of Article 13 TEC, regarding the fight against racism and xenophobia, and the adoption of the Racial Equality Directive (RED)<sup>4</sup> in 2000 implementing the prohibition of discrimination on the grounds of *race and ethnic origin*. The Racial and Equality Directive sets out to prohibit discrimination in the areas of employment, education, social protection and housing and sets minimum standards of how the Directive should be transposed into Member states’ as well as applicant states’ national legislations. The non-discrimination norm is also assessed on the basis of the Council of Europe’s Framework Convention for the Protection of National Minorities (FCNM) since ratification of the framework also constitutes a central part of meeting the Copenhagen criteria in terms of minority rights. Although not as specific and encompassing as the minimum criteria stipulated by the EU, the content and purpose of Article 4 of the FCNM is “to ensure the applicability of the principles of equality and non-discrimination for persons belonging to national minorities” (FCNM, Explanatory Note 1995: 16). Article 4 of the FCNM stipulates that the States parties have an obligation to “guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited” (Article 4(1), FCNM).

The norm of non-discrimination has been categorized as being based on a continuum, varying from the lowest level of non-discrimination legislation to the highest. On the basis of five indicators, where each indicator has been given a value, we will be able to determine the level of non-discrimination legislation for each category of the recipient states. In order to analyse the progress made, the status of each recipient state upon gaining status as candidate state, potential candidate state, and ENP state, respectively, will be determined on the basis of the annual monitoring reports of both the EU Commission, and also the Advisory Committee of the Council of Europe. Thus, on the basis of the values, given to each recipient state of each category upon accession to the different statuses, this will, consequently, permit an analysis of the subsequent progress made in the level of adopted legislation. In order to determine the association between the temporal dimension of the membership incentive and the level of rule adoption, the variations have been measured by calculating the Eta square value in terms of inter-category variations. This, in turn, will enable us to determine the explanatory power of the speed dimension’s impact upon the progress made in the level of rule adoption during the time frame of the study, limited to the period 2003 - 2010.

*Fig. 3 Level of rule adoption in non-discrimination*

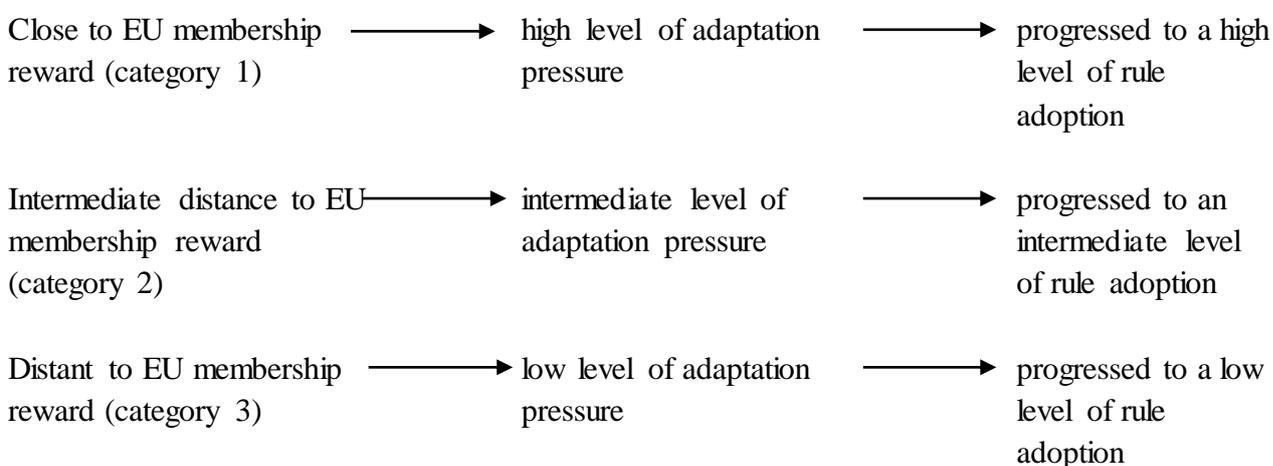


(0): Absence of any non-discrimination norm;

- (1): General provisions such as an equality clause in the Constitution;
- (2): Non-discrimination laws are inserted in specific laws (language laws for instance) which entails a partial transposition of the EU Directives;
- (3): Comprehensive anti-discrimination legislation which then means that there has been a complete transposition of the EU anti-discrimination *acquis*;
- (4): Non-discrimination laws exceed the minimum requirements of the Directive.

On the basis of our empirical base, and according to our categorisation, it is thus expected that by 2010, the level of rule adoption would have progressed to be the highest in Croatia and the Former Yugoslav Republic of Macedonia (category 1: candidate states), to have acquired an intermediate level in Bosnia, Kosovo, and Serbia (category 2: potential candidate states) and to have progressed the least in Azerbaijan, Georgia, and Moldova (category 3: ENP states).

*Fig. 4 Speed of reward hypothesis and categorisation of the empirical base*



### The principle of differentiation in relation to uncertainties surrounding the temporal location

When having measured the level of rule adoption, on the basis of the progress made in the respective categories during the time frame of the analysis, the results of the investigation, however, only partially confirmed our postulated hypothesis. The results pertaining to legislation in the area of non-discrimination showed that the speed of the prospective EU membership reward did constitute an effective mechanism of adaptation pressure, but only partly. On the one hand, we observed that whereas the relationship between the speed of the prospective EU membership reward and the level of rule adoption was quite weak initially (eta square value: 0.208), it had been substantially strengthened when we had measured the progress made by 2010. In fact, in 2010, the variation in the level of rule adoption between the three categories was explained by more than 65% by the speed of the prospective EU membership reward (eta square value: 0.652). On the other hand, however, it became evident that the strengthened association, between the temporal distance and the level of rule adoption, was, primarily, explained by the increased variation in the level of rule adoption between the ENP-states (category 3), which had remained

on the same low level of rule adoption as initially, and both categories of the Western Balkan states. Since the candidate states (category 1) and the potential candidate states (category 2) had progressed to the same high level of rule adoption, this had entailed a levelling out of the expected differences in rule adoption between the two categories. Obviously this result was highly unexpected, since the candidate states are temporally closer to the EU membership reward than the potential candidate states, thus, rendering that the hypothesis was partially invalidated. The eradication of the demarcation between the two categories raises questions both on the relevance of the categorisation but also on the lack of temporal devices of SAp-conditionality. (Parkhouse 2013: 354-355)

On the basis of the same structures as pre-accession conditionality of 1993, SAp-conditionality was launched in 2000 as a mechanism to integrate the former warring states of the Western Balkans into the structures of the EU. However, as opposed to the conditionality of the Eastern European enlargements of 2004 and 2007, three distinct features, specific of SAp-conditionality, were introduced. Firstly, SAp-conditionality was not directly linked to enlargement since no explicit promise of EU membership was made.<sup>5</sup> Second, the principle of differentiation was retained as a lesson drawn from the previous Eastern enlargement which consequently introduced the categorisation, on the basis of the recipient states presumptive possibilities of compliance, into candidate states and potential candidate states. Lastly, SAp-conditionality was based on the principle of contextualisation in that it was country-specific. These three specificities are argued to have limited the impact of the temporal dimension on rule adoption in the area of non-discrimination legislation.

Since the *finalités géographiques* of SAp-conditionality were left undetermined, the temporal location of the potential EU membership reward was left undefined. In the area of non-discrimination, the uncertainties surrounding the temporal location seem to have been instrumental as to the reduction of the temporal dimension's impact on the adaptation pressure, and therefore on the legal behaviour of the recipient states of the Western Balkans. Indeed, the lack of temporal devices, especially timetables, with fixed dates and sequences associated with each category, strongly indicates that the recipient states perceive that they are competing on the same temporal footing. This, in turn, abolishes any temporal frontiers, thus invalidating any variation in the level of adaptation pressure, and, consequently, in the level of rule adoption. Therefore, in the cases where there is uncertainty, not only as to how speedily the prospective EU membership reward will benefit the recipient states, but also as to the duration of the whole conditionality-compliance process, the effectiveness of the speed dimension is seriously reduced in favour of other considerations. These considerations seem to have more to do with the level of motivation, i.e. political will and capacities, of the individual states. Interestingly, we noted that the uncertainty, surrounding the time-frame between compliance and reward, effectively produced very different legal behaviours in the recipient states. Whereas the temporal uncertainty seemed to have created what Goetz has called "trans-temporal policy problems" (Goetz 2009: 208) in Macedonia and Bosnia, constraining these states into a low level of rule adoption, the opposite legal behaviour was noted in the cases of Croatia, Serbia and Kosovo.

The low level of rule adoption in the Macedonian case is particularly interesting since it is a candidate state and thereby being temporally the closest to the EU membership reward, at the same time as it enjoys most of the financial assistance of SAp-conditionality (since having the status as candidate state). Financial assistance notwithstanding, in the Macedonian case the uncertainties surrounding the temporal location seem to have constrained the Macedonian

government into a situation of legal relaxation. The low level of rule adoption in the Bosnian case is, however, more comprehensible since it seems to be more related to the dysfunctional effects of the Dayton Peace Agreement than to the Bosnian level of motivation. At the same time, though, it is highly likely that the prerogatives granted to the three constituent nations, enshrined in the peace treaty, might very well have constituted a legal pretext for the Bosnian government to abstain from adopting more extensive legislation, at least in the area of non-discrimination. As opposed to Bosnia, and particularly Macedonia, the legal behaviours of Croatia, Kosovo and Serbia indicate that they have taken advantage of the opportunities of the uncertainties surrounding the temporal location, since they all have progressed to a high level of rule adoption. Thus, whereas the legal behaviour of Macedonia runs counter to Avery's argument, which is that the uncertainty surrounding the temporal location would predispose applicant states "to try harder to meet the EU requirements" (Avery 2009: 262), the legal behaviours of Croatia, Serbia and Kosovo are completely in line.

The lack of progress in the third category is not surprising and only confirms our hypothesis. Indeed, since they are temporally the furthest away from the prospective EU membership reward, there is, in fact, very little incentive to provide for a higher level of rule adoption. This, in turn, explains the substantial increase in variation which became clear when we proceeded to calculate the Eta square value which then displays a significantly higher value than initially. However, the Eta square value should be taken with precaution since the number of cases only amounts to 8. Nevertheless, the results are at least a strong indication of the direction of the association between the two variables.

## What have we learnt?

Whereas the lack of temporal devices, and especially set time-tables specific for each category, most probably constitutes an impediment towards more effective rule adoption, in general, and for the states having been the least prone to adopt extensive legislation (Macedonia and Bosnia), in particular, one is tempted to question the strategy of the EU pertaining to the categorisation. Bearing in mind, however, that our domain of investigation only constitutes one small area of the conditionality package, the categorisation nevertheless raises questions. On the basis of the level of rule adoption, in the domain of non-discrimination at least, a more measured categorisation would have been to place Croatia, Kosovo and Serbia in the category of the candidate states, whereas it would have been more relevant to place Macedonia, along with Bosnia, in the category of the potential candidate states. At the same time, however, it is highly probable that the categorisation is not only determined by the level of the extensiveness of legislation adopted, but also is explained by the *de facto* situation of discrimination, as well as challenges pertaining to the legal order of the recipient states.

In this regard, it is obvious that the situation in Kosovo is problematic and most probably explains why Kosovo is placed in the category of the potential candidate states. Even though *de jure*, the level of anti-discrimination legislation is more extensive in Kosovo than in Serbia, it is evident that the *de facto* situation in Kosovo is more alarming than in Serbia, as indicated by the reports of the monitoring bodies. (Parkhouse 2013: 358) Furthermore, the *sui generis* situation of Kosovo, which still can be characterised as a semi-independent state and, in fact, still is monitored on the basis of UN Resolution 1244, is another sensitive issue. Not only is it sensitive from the perspective of particularly those EU member states that have not recognised the independence of

Kosovo, it is also challenging from the perspective of the recipient states, and particularly Serbia, whose non-recognition not only complicates the future accession of Kosovo but also prolongs Serbia's own road to the prospective EU membership. This also explains the EU stance, which is proactive at the same time as it is restrained. This can be seen in the fact that although Kosovo scores the same high level of rule adoption as Croatia, the EU Commission never speaks of near compliance in the Kosovo case. It is clear that Serbia is less controversial, since neither Serbia's legal situation, nor its *de facto* discrimination, causes any real concern from the EU. (Parkhouse 2013: 359) Not surprisingly then, Serbia had, in fact, been upgraded to the status of candidate state by March 2012. Notwithstanding Serbia's level of rule adoption in the area of non-discrimination, since our investigation is limited to 2010, it is however highly probable that the progress to candidate status was also due to progress in other areas of the conditionality process.<sup>6</sup>

The categorisation, in relation to the lack of temporal devices, might seem to be an ineffective mechanism when preparing the Western Balkan states for eventual EU membership. However, it is highly likely that this is a well thought-out strategy, since it enables the EU to stay non-committal towards these recipient states, at the same time as keeping them on a leash of membership expectations, regardless of the category they belong to. The EU strategy is comprehensible since it leaves the EU with the utmost flexibility of action. The non-committal strategy seems to be based both on a sense of enlargement fatigue in parallel to a lack of consensus from the member states on the end-goal of the SAp-conditionality-compliance process. It has to be acknowledged that the strategy has proven to be effective since the results show that, even in the absence of membership guarantees, the recipient states, in general, were decidedly prepared to comply with the EU conditions on non-discrimination. In light of these considerations, the non-committal strategy and the lack of an explicit promise as to when, and, consequently, how speedily the ultimate reward might benefit the recipient states, is comprehensible, however precarious, in a long-term perspective. Precarious, in the sense that the lack of a temporal location of the prospective EU membership reward, as well as the blurring of the temporal distance, can create a sense of fatigue, at least on the part of some of the recipient states, whose motivations to comply might stagnate, as already noted in the cases of Macedonia and Bosnia.

The strategy is precarious also from the perspective of the political instability which still characterise Bosnia, Macedonia and Kosovo, in particular, whose societies are still permeated with inter-ethnic tensions. Consequently, a sense of temporal infinity, in regards to the ultimate EU membership benefit, might aggravate the inter-ethnic tensions, which paradoxically were the main reasons for the launching of SAp-conditionality.

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## Notes

1. The Copenhagen criteria were adopted in June 1993 and consist of four criteria which are conditional upon accession to the EU. The minority rights criteria is part of the political criterion, the other criteria refer to economic criteria and the functioning of a market economy. The criteria also encompass the transposition of the whole EU *acquis* as well as the obligatory adherence to the aims of the political, economic and monetary union. Cf. European Council, “Conclusions of the Presidency”, DOC SN 180/1/93 REV, Copenhagen, 21-22 June 1993, p. 13.
2. The Kosovo status as defined in UNSC resolution 1244. Cf. <http://www.un.org/DOCS/scres/1999/sc99.htm>.
3. Serbia was upgraded to status as candidate state in March 2012 but at time of assembling the empirical data, Serbia was a potential candidate state.
4. Council Directive 2000/43/EC, *Official Journal L180*, 19 July 2000.
5. The only “promise of future EU membership seems to be grounded in the statement of the Thessaloniki Agenda which was reiterated in 2005 and which stipulated that regardless of category “the future of the Western Balkans lies in the European Union”. Cf. Presidency conclusions from the European Council meeting, July 2005, p. 12. Available at: [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/85349.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/85349.pdf).
6. The fact that Serbia had finally agreed to extradite the remaining war criminals to the International Tribunal for the former Yugoslavia (ICTY) was most probably crucial to the decision to upgrade Serbia from potential candidate state to candidate state.

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