

The impact of EU conditionality policy on human rights and rule of law in the western Balkans: An attempt at a methodology

Abstract

This article seeks to explore the underlying methodological dimension of measuring the impact or effects of the EU's policy of conditionality in western Balkans states in the arena of human rights protection and respect for the rule of law. These are critical issues in which aid conditionality has global dimensions, while the EU itself remains a valid international actor. The article also focuses on the adequacy of the measurement instruments used to measure the impact of this policy, based on the existing trends as well as past experience with enlargement to central and eastern Europe. The author identifies the major research questions that need to be confronted and suggests an appropriate methodological approach to resolve these, including an important gender dimension. In the process, he identifies the deficiencies concerning the measurement of conditionality which have come to haunt the application of the policy. The central aim kept in mind throughout is to seek improvements in the application of the policy itself and with a view to the wider lessons regarding the role that conditionality has come to play.

Keywords: EU enlargement, western Balkans, human rights, conditionality, methods of measurement, Covid-19

Introduction

Western Balkan states have been a focus of European foreign policy for the last two and a half decades from the Yugoslav wars to asylum seekers arriving through the Balkan route. Both the most recent (Croatia) and the upcoming EU accessions concern countries from the region and the reforms made in each such case have been largely conditioned by some form of external involvement. This has made the EU's engagement central for the future of this region.

All the major events of the recent past, from the Kosovo-Serbia dialogue to the internal functioning of Bosnia and Herzegovina, political crisis in Macedonia or fundamental justice reforms in Albania have been defined by the active participation of and a critical role for the EU. Indeed, enlargement is considered to be the EU's most efficient foreign policy instrument in terms of its ability to transform existing practices and institutional structures outside of its borders. Less is known, however, about how it works on the ground in specific contexts.

Despite high leverage at the general level and the monitoring efforts which have been made, for example through assessments in the Commission's annual (progress)

country reports, a large part of the enlargement literature shares the view that the EU's record in spreading human rights and democratic norms in a credible and effective fashion during the accession process is, at best, mixed. Compliance may stop at the level of formal changes, seemingly satisfying both sides – the candidate country's government as well as the EU – while falling short of bringing about sustainable reforms that are hard to be reversed.

This article is interested in the particular policy of conditionality adopted by the EU as an instrument to condition and bring about change. How it works, or indeed whether it works, is a subject that has intrigued a wide array of actors obviously including academia. Even so, not much attention would seem to have been paid to discrete spheres of decision- and policy-making that form a critical part of both the EU's internal values and its foreign policy goals, namely the promotion and protection of human rights. Moreover, a desirable systematic inquiry into the adequacy of the methods employed to measure impact would also appear to be lacking. This article seeks to offer a general survey of these issues and makes an attempt at recommending certain methodological insights which could help improve the measurement of the impact of the EU's policy of conditionality. The end result sought is improvements in that same policy.

Pertinent background

The experience of central and east European¹ enlargement has revealed the limits of the EU's democratic conditionality as measured by implementation, sustainability and post-accession performance. This means that new member states carry their democratic and human rights deficiencies with them. In turn, this calls for new mechanisms to address problems with human rights and the rule of law within the EU. A specific example could be the new mechanisms established for the EU member states of Bulgaria and Romania, i.e. the Mechanism for Cooperation and Verification (CVM) through which the European Commission assesses and supports the progress of Bulgaria and Romania in many predefined areas.

Academic research should aim to map the factors that explain the under-performance of pre-accession conditionality and suggest ways of improving the effectiveness of human rights conditionality (Bartels 2005; Fierro 2003; Nogueras and Martinez 2001; Nowak 1999).

Few studies have looked into the details of human rights conditionality during the accession process and what has been done has an almost exclusive focus on central and east European countries that are already EU members (Sasse 2008; Epstein and Sedelmeier 2008; Houghton 2007; Schimmelfennig and Sedelmeier 2005; Grabbe

1 The term 'central and eastern Europe' is understood to mean the following countries: Estonia, Latvia, Lithuania, Czech Republic, Hungary, Poland, Slovakia and Slovenia. Where relevant, the south-east European countries of Bulgaria and Romania could also be referenced. The western Balkans, as politically conceived by the EU institutions, encompasses the south-east European countries of Albania, Bosnia and Herzegovina, Kosovo, North Macedonia, Montenegro and Serbia. Geographically, Croatia (now an EU member state) forms part of the region.

2001). Otherwise, the research programme is focused either on the (almost) exclusive domain of minority protection (Vermeersch 2004, 2003; Topidi 2003; Pentassuglia 2011) or on the broader confines of democracy and the rule of law (Sadurski 2004; Schimmelfennig and Sedelmeier 2004; Schimmelfennig *et al.* 2003; Dimitrova 2002).

The abundance that defines the literature on the content and consequences of EU conditionality in the region of central and eastern Europe, or on other countries that have already acceded to the EU, misses the developing context of EU-aspirant countries in the western Balkans.

As regards the process, one can observe the overall lack of at least two methodological approaches: first, the absence of a structured mapping of the types of rights and legal and policy instruments analysed in order to determine both the priority for and the significance of intervention by the EU; and, second, the lack of empirical evidence generated from structured tools such as interviews with relevant stakeholders in the policy- and decision-making bodies of the EU and in the affected western Balkan countries.

Overall it can be stated that, while conditionality can play a more productive or enabling role in generating progress, growth and compliance with EU conditions, the perceived picture so far is painted with a degree of confusion at both national and regional levels concerning ownership, credibility and the effectiveness of the existing measures and strategies which form the policy of conditionality. To change this view and better relate the realities on the ground to the intended objectives, the EU should build an evidence-based narrative demonstrating how its policy of conditionality can enable the delivery of structural reforms. One of the many measures to be explored and employed would be the introduction of stringent impact assessments to show the role and effects of *ex ante* and macroeconomic conditions (Huguenot-Noël *et al.* 2017).

Conceptual considerations of conditionality

Much has been said and written about the EU's policy of conditionality, but it can hardly be said that there is a clear and singular description of what it means. It can, however, be stated with some degree of confidence that the EU's image of itself as an international actor remains at the heart of this policy. Besides the implications of the EU's effectiveness at discharging its financial and foreign policy functions, its policy of conditionality is also critical for the quality of the institutions and governance among its prospective members.

Standing as a prime example of a unique regional structure of authority, conditionality is derived from the EU's legal and political identity and its aspirations of broader international influence consonant with its values. This policy is, however, yet to be fully understood, particularly its effects on reform or the results in discrete sectors such as human rights protection, the rule of law or sustainable development.

Therefore, further research is needed to understand in full the more precise impact of EU conditionality on these values and its effect on improving the human condition, particularly in enlargement countries and overall across both enlargement and neighbourhood regions.

Recent applications of the EU's policy of conditionality in the western Balkans

The EU has most recently applied conditionality as a measure to mitigate the socio-economic challenges of the Covid-19 pandemic.

On 25 May 2020, the European Parliament and the Council of the European Union adopted Decision 2020/71 to make macro-financial assistance (MFA) available to five western Balkans countries and five other countries from the neighbourhood region for a maximum total amount of €3bn. The five western Balkans countries are Albania, Bosnia and Herzegovina, Kosovo, Montenegro and North Macedonia; while the neighbourhood partners are Georgia, Jordan, Moldova, Tunisia and Ukraine (European Union 2020a).

The MFA's fundamental aim is to support economic stabilisation among the partners given the challenges of the pandemic and a substantive reform agenda (European Union 2020a, Art. 1). Thus, it supports economic stabilisation by restoring a sustainable external financing situation for the targeted countries, ultimately looking to support renewed economic and social development.

The policy justification for Decision 2020/71 is linked to Covid-19's highly damaging effects on economic and financial stability in the enlargement and neighbourhood regions. Additionally, there are considerations that partner countries from these regions are presently facing a weak and rapidly worsening balance of payments and fiscal situation with economies moving into recession. Therefore, the EU considered that it had a compelling case to move quickly and decisively to support those economies.

The EU's Decision clarifies that assistance should be subject to economic policy conditions laid down in a separate Memorandum of Understanding (MoU) individually negotiated and concluded between the European Commission (on the EU's behalf) and partner countries. More specifically, Article 2 of the Decision lays down the principles that form the contents of the policy of conditionality in this specific situation, providing that:

A pre-condition for granting the Union's macro financial assistance shall be that the partner respects effective democratic mechanisms, including a multi-party parliamentary system, and the rule of law, and guarantees respect for human rights. (European Union 2020a, Art. 2).

In other words, the decision on granting financial assistance is guided by a commitment to the EU's quintessential values of democracy, rule of law, good governance, respect for human rights, sustainable development and the reduction of poverty, as well as to the broader economic principles of open, rule-based and fair trade.

Article 3 details further the operationalisation of these pre-conditions in that it authorises the European Commission to agree with the authorities in each partner country clearly-defined economic policy and financial conditions focusing on structural reforms and sound public finances. Those economic policies and financial terms are laid down in the MoU (European Union 2020a, Art. 3).

On 11 August 2020, the Commission agreed MoUs on MFA programmes with eight partners: Albania, Georgia, Jordan, Kosovo, Moldova, Montenegro, North Macedonia and Ukraine. Negotiations of the MoUs are underway in respect of the

two remaining countries, i.e. Bosnia and Herzegovina and Tunisia (European Commission 2020b).

For Albania, the policy conditions for its €180m MFA programme relate to strengthening public finance and the resilience of the financial sector; improving governance and fighting corruption; and enhancing social protection. In the case of Kosovo, the policy conditions for the €100m programme put in place here relate to strengthening public finance and financial stability; addressing youth unemployment; improving good governance; and fighting corruption. For Montenegro, the policy conditions for the €60m programme drawn up here relate to strengthening public finance and the fight against corruption; enhancing financial stability; improving the business environment; and reforming social protection. For the fourth and last western Balkans beneficiary country, North Macedonia, the policy conditions for its €160m programme relate to strengthening fiscal governance and transparency; the fight against corruption; enhancing financial sector supervision; improving the business environment; and tackling youth unemployment (European Commission, 2020b).

The policy of conditionality articulates what academic literature has elsewhere referred to as ‘the EU factor’, which is best conceived in terms of an instrument that conditions economic and political reform and alignment with the EU’s *acquis communautaire*, creating in aspiring EU member countries stable political arenas and attractive markets that are ultimately conducive to EU membership. The EU factor manifests itself through broader and more diverse economic instruments, more considerable political influence and overall stabilising effects exerted in regions that fall under the European umbrella or are in its immediate neighbourhood (Qerimi and Sergi 2017, 2005; Sergi and Qerimi 2008, 2006).

An agenda for future research

This section proposes and addresses some of the fundamental questions in need of examination, forming an agenda for future research in the field.

Conditioning accession with reform and results has become a common *modus operandi* in the EU’s enlargement policy. The next stage of enlargement or extension of the wider EU family is expected to occur in the south-eastern European region of the western Balkans where human rights and respect for the rule of law have both been a major problem and concern. Both issues also represent a cornerstone of the EU’s foundational values and aspirations.

Implicit in these aims is an inquiry into two inter-related questions forming the specific questions which need to be explored in the course of future research:

1. to what extent has the EU’s policy of conditionality successfully influenced human rights protection and rule of law reform in the western Balkans?
2. what are the factors that have conditioned success or failure in the course of implementing the policy of conditionality?

The ultimate objective should be to understand the degree and type of impact of the policy of conditionality on human rights and rule of law (separately or taken to-

gether, depending on the type and scope of the research), which can be split into three micro-objectives, as follows:

1. identify gaps in the rhetoric and action undertaken by the EU
2. distinguish between the factors that work best and what do not work in terms of the policy instruments that are intended to bring about change
3. invent or identify an alternative policy design; and recommend solutions in line with an order based on effective human rights and rule of law.

In order to implement such a research agenda, a more elaborate and adequate methodology remains the key.

A proposed methodology

Given the nature of the questions to be examined, the article proposes at least two key methodological tools:

1. a systematic inquiry into a wide array of EU instruments, both in financial and in policy terms, thus going beyond a mere analysis of the EU country progress reports (which have been the almost exclusive point of reference in existing research). This should also encompass the decisions and declarations of the Council as well as the resolutions and recommendations of the European Parliament
2. qualitative research based on structured or semi-structured interviews conducted in line with a set questionnaire which would allow sufficient flexibility to ensure the desired depths and results. The interviews could be organised with the following core groups:
 - a) key decision-makers in the EU dealing with the western Balkans and enlargement policies in general
 - b) NGO representatives in each examined country
 - c) governmental representatives in each of the observed countries.
3. The relevant experience of the researchers taking part in the research project could form a third component to the methodology.

Other important complementary sources ought also to be consulted. These would include reports from NGOs; the reports of international organisations present in the region (primarily the UN, CoE and OSCE); and the reports of independent human rights associations such as the Ombudsperson institutions. Careful selection and the contextual application of this amalgam of sources would give the research project a uniquely positioned advantage concerning its overall contribution and visibility in the light of the intensiveness of the policy-oriented academic universe.

More traditional theoretical concepts would come from institutional analysis, the study of law, pertinent social science theory and the literature on Europeanisation.

Academic literature that analyses or observes the actual content and results of the EU's promotion of human rights, placed in terms of conditionality, has been absent when it comes to the western Balkans. A similar conclusion is valid with regard to studies of the impact of EU conditionality in western Balkan countries from the perspective of specific individual human rights or group rights, or institutional reforms that seek to enhance human rights protection.

Key methodological features which are absent in the present doctrinal discourse need also to be applied. A comprehensive presentation of these and other aspects of the proposed methodology is summarised in Table 1.

Table 1 – A proposed methodology

Item	State of the art	Proposals / advancement
Study of EU's conditionality policies	Analysis of EU country progress reports	Systematic inquiry into legal and policy instruments
Measurement of EU's conditionality policies	Doctrinal insights and interpretation	A multiple-element approach, composed of a diverse set of elements: (1) structured or semi-structured interviews; (2) the personal experience of the researcher in the region; (3) reports of independent organisations
Territorial objective	Almost exclusive focus on central and east European countries; or existing EU members	Exclusive focus on EU-aspirant countries from the western Balkans
Scope of question	Broader examination of the policy of conditionality with broader democracy considerations	Examination of conditionality and its effects on specific individual human rights, including institutional reforms that have enhanced human rights protection
Result	Absence of clear answers and comprehensive multi-method measurement of impact	New insights on the impact of EU conditionality on the protection of human rights in EU-aspiring western Balkan countries; lessons with worldwide policy implications

A gender dimension should also be included in the scope of observation. Here, several aspects could be investigated. By way of example, one particular component that could be looked at in detail is the political participation of women (e.g. representation in parliament and municipal assemblies) and the weight allocated to this by the EU in its conditionality policy. Certain countries in the region do apply percentage quotas for women representatives. The feasibility of this policy should be assessed in the light of oft-debated questions concerning the quality and influence of such formulas.

Conclusion

The EU's role as an international actor remains a most valid point of inquiry. Beyond the implications pertaining to the EU's effectiveness in discharging its financial and foreign policy functions, its conditionality is critical for the quality of institutions and the governance of its prospective members. Being a prime example of a unique regional authority structure, both for reasons of its legal and political identity and its broader international influence, the implications of an enhanced understanding of the impact of conditionality on the fundamental tasks of protecting human rights and

fundamental freedoms, and thus improving the human condition, could also be of paramount importance in other regions of the globe.

This article has sought to further our existing understanding of conditionality and its effects in human rights protection or respect for the rule of law (in the present case in terms of EU-aspirant western Balkans countries). In doing so, it has proposed a methodology whose ultimate aim is to inform and influence relevant policy-making with the singular goal of improving the policy of conditionality expressed in terms of being more likely to achieve its expressed aims. A better, more influential and more assured EU integration path would surely be the result.

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Qerim Qerimi is Associate Professor in the Faculty of Law of the University of Prishtina, Rr. 'Agim Ramadani', 10000 PRISHTINË, Republic of Kosova. e-mail: qerim.qerimi@uni-pr.edu.



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