

**National Minority Policies in the EU accession process - the
cases of Croatia and Macedonia**

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The candidate confirms that the work submitted is her own and that appropriate credit has been given where reference has been made to the work of others.

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Abstract

This thesis examines the role of EU in shaping national minority policies in Macedonia and Croatia since the launching of the first forms of EU conditionality in relation to the Western Balkans in the late 1990s. Research on EU conditionality has developed foremost in the context of the Eastern enlargement, largely neglecting the former Yugoslav countries. This dissertation contributes to filling this gap by studying the dynamic interactions between the EU and the national level in relation to national minority policies. The thesis utilizes primary document analysis and open-ended interviews in a combination of comparative case study method and process tracing. It tracks and explains the construction, application and implementation of EU conditionality in relation to minority policies between 1997 and 2012. The study employs before and after approach in relation to 2004/2005 when Croatia and Macedonia applied and became official candidates for EU accession. As national minority policies are not part of the EU *acquis*, the research studies how the EU institutions, especially the EU commission have used international instruments (such as the Framework Convention on the Protection of National Minorities) and national legislative provisions as elements of EU conditionality. In addition, the research examines in depth the policy of employment of minorities in the administration as a novel segment of EU conditionality in the two case studies. The analysis demonstrates the lack of consistency of this mechanism, its development and change over time as well as its potential for polarisation. Primarily, the thesis fills an existing gap in literature concerning the study of the role of conditionality in national minority policies in Croatia and Macedonia. On a conceptual level, this research sheds light on dynamic relationship between Europeanisation by conditionality and democratic consolidation in the conditions of post-communism.

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List of abbreviations

CARDS – Community Assistance for reconstruction, development and stabilisation

CEE – Central and East European

CLNM – Constitutional Law for the Protection of National Minorities

CoE – Council of Europe

CSO – Civil society organisation

DPA – Democratic Party of Albanians

DUI – Democratic Union for Integration

EU – European Union

FCNM – Framework Convention for the Protection of National Minorities

HCNM – High Commissioner for National Minorities

HDZ –Croatian Democratic Union (Hrvatska Demokratska Zajednica)

HRW – Human Rights Watch

ICG – International Crisis Group

IHF – International Helsinki Federation

ILO – International Labour Organisation

ICTY – International Criminal Tribunal for the former Yugoslavia

MP—Member of Parliament

NATO – North Atlantic Treaty Organization

NPAA – National Plan for the Adoption of the *Acquis*

NPiEU – National Plan for Integration in the European Union

OFA – Ohrid Framework Agreement

OSCE – Organization for Security and Cooperation in Europe

PDP – Party for Democratic Prosperity

SAA – Stabilisation and Association Agreement

SAP- Stabilisation and Association process

SDS – Serbian Democratic Party (Srpska Demokratska Stranka)

SDP – Social Democratic Party

SDSM – Social Democratic Union of Macedonia (Социјалдемократски сојуз на Македонија)

SDSS – Independent Serb Democratic Party (Samostalna Srpska Demokratska Stranka)

UN – United Nations

VMRO – DPMNE – Internal Macedonian Revolutionary Organisation – Democratic Party for Macedonian National Unity (Внатрешно Македонска Револуционерна Организација – Демократска Партија за Македонско Национално Единство)

*“The European Union is founded on the value of respect for human dignity [...], equality [...] and respect for human rights, including the rights of persons belonging to minorities”.*¹

1. Introduction

1.1 The EU and the national minority question in post-communism

The accommodation of national minority rights through the formal state institutions is considered a litmus test for democracy. Diversity has in fact persisted firmly on the political agenda both in cases of ethnocultural neutrality or full recognition of national minority rights. In this context, globalisation and the European integration processes in Western Europe have not resulted in overcoming minority nationalisms. In fact, the national minority question has manifested itself through a wide spectrum of demands, including, but not limited to cultural and language rights, local self-government, autonomy and secession. The continued perseverance of this issue has confirmed that “minority questions are among the most contested issues in political life because they speak to an inherent tension in human affairs between competing desires for freedom and belonging” (Jackson Preece, 2005 p.5). Thus, any democratic order is faced with the challenge of treating its citizens equally, while at the same time respecting the demands of national minority groups in various areas of public and private life.

This dilemma originates in the traditional European shared understanding of the nation and state, “which has been subsequently exported to the rest of the world” (Keating and McGarry, 2001 p.1). In contemporary Europe, the national minority issue gained further prominence with the dissolution of the former Soviet Union, Czechoslovakia and Yugoslavia in the democratisation wave of the early 1990s. As a result of the fragmentation of these multinational socialist federations, the political space in Europe and Asia was reconfigured by leaving “millions of people outside ‘their own’ territory” (Brubaker, 1995 p.108). The redrawing of borders in the post-communist world resulted in the building of new multi-ethnic entities with (old and new) majorities and minorities. The succeeding independent states faced the challenges of building nations and/or states while

¹ Article 2 of the consolidated version of the Treaty on European Union, Official Journal of the European Union C115/13 of 9.5.2008. available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0013:0045:en:PDF>

respecting the rights of national minorities in them. The dominant tendency in all of these countries was towards (re) nationalisation denoting the building of states of the titular majorities, in many cases for the first time (See Brubaker, 1995). In response, the processes of nation and state building in many of these new states were accompanied with difficulties in integrating national minorities or even led to inter-ethnic conflicts. In fact, the (re) gained independence of many of these states revealed the tensions between the processes of nation and state building and delineating national minorities' rights.

In light of these tectonic changes on the political landscape in Europe, the national minority issue was recognised as a matter of the international society (See Jackson Preece, 1997, Kymlicka and Opalski, 2002). International organisations such as the Council of Europe (CoE), the Organisation for Security and Cooperation in Europe (OSCE), the European Union (EU) and the North Atlantic Treaty Organization (NATO) explicitly included the protection of minority rights in their democracy promotion agendas. For the new independent states membership in these international organisations was the most important foreign policy goal and was perceived as recognition of their new status as sovereign actors on the international scene. Thus, their requirements were an important factor in the development of the domestic national minority policies. The strategies and mandates of these international organisations were nevertheless different. On the one hand, the CoE and the OSCE had a strategy of socializing the post-communist elite from within, i.e. following the countries' accession. Schimmelfennig describes this as an *inclusive* strategy, through which "the organisation first admits outsider countries and then teaches them the community rules" (Schimmelfennig, 2002 p.8). The EU and NATO had the opposite strategy of socializing countries from outside, through stipulating conditions for the respect of minorities for the purposes of accession (Schimmelfennig, 2002). In any case, the involvement of these international organisations amplified their role in the democratisation of the post-communist world (Pravda, 2001, Smith, 2002).² As a result, literature widely recognised that political developments are

² Starting from the premises of the transition theorists of the 1960s and 70s, the early literature on post-communist transition and democratisation focused on the domestic factors as crucial for the democratisation processes, without a major examination of the role of external actors OFFE, C. 1997. *Varieties of transition: the East European and East German experience*, Cambridge, Massachusetts The MIT Press.

the result of interactions between domestic and international actors (Schmitter, 2001).

The inclusion of minority rights in the accession criteria in all the above mentioned international organisations has developed against the background of a missing consensus on common standards or approaches in this policy area. Kymlicka (2002a) points out that “Western countries differ amongst themselves in their approach to ethnic relations and attempts to codify a common set of minimum standards or best practices have proven difficult” (p.1). In this set of organisations, the CoE and the OSCE were formally vested with the monitoring of minority rights in their mandates, foremost in relation to the new independent post-communist countries. The former in 1995 became a host of the Framework Convention for the Protection of National Minorities (FCNM) which remains the only binding document in this policy area. The CoE, however, and its instruments were largely seen as an entry point for all of these new independent states to membership in the EU. Thus, the EU was politically by far the most significant for the elites and the public in these countries, increasing the qualitative potential of the Union for influencing the domestic transformation processes (Grabbe, 2006, Pridham, 2005).

The EU also included the respect for and protection of minorities in its accession criteria in the still ongoing absence of an agreed definition of a minority and common standards for the EU member states (De Witte, 2002). In fact, “a definition of “minority” is nowhere to be found in the [...Union’s...] documents, leaving it to the candidate countries to determine whom the Commission was asking them to respect and protect” (Kochenov, 2008 p.30). The lack of a common standard is most striking in the old member states France and Greece, which do not recognize the existence of ethnic minorities on their territories (See De Schutter, 2010). However, the “absence of minority protection from the *acquis* and the non-existence of a common Member States’ standard in the field did not prevent the Community (and especially the Commission) from giving minority protection full priority over other issues during the pre-accession” (Kochenov, 2008 p.2). More specifically, at the Copenhagen summit in 1993, the EU member states decided that in order to join the EU, a new member state must first ensure

the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.³

The linking of the fulfilment of specific requirements by international organisations to the objective of membership has been widely referred in the academic and policy arena as *conditionality* (Schimmelfennig and Sedelmeier, 2004, Hughes et al., 2004, Kelley, 2004b). This instrument structured the relationship between the EU and the acceding countries in the Eastern enlargement and continues to do so in the subsequent enlargements. Using conditionality specifically in relation to national minority policies, the EU became an actor that directly participated in the processes of nation and state building of the acceding countries. However, due to the lack of common rules in this policy area the EU has relied on assessments of other organisations, most notably the CoE and the OSCE in the devising of its requirements. In addition, the EU has also used national legislation or its respective implementation as part of its conditionality in relation to national minorities.⁴ Over time, the Union has evolved into a hub of conditionality in relation to national minority policies. As a result, since the 1990s the EU has progressively gained more and more significance in relation to national minority policies in the context of the candidate countries for accession.⁵

This role of the EU in shaping national minority policies through conditionality has been the subject of significant academic interest foremost in the Eastern enlargement. The conclusions of these studies vary and are dependent upon the context and the specific policy area. Two main trends can nevertheless be determined. On the one hand, research has supported the EU's role in relation to democratisation in the conditions of post-communism specifically with respect to national minority rights (Vachudova, 2005, Kelley, 2004a). In the opposite direction, Hughes, Sasse and Gordon criticized the tendency of enlargement literature to "mythologize the positive relationship between conditionality and enlargement" calling for more empirical based studies of the application of conditionality (Hughes et al., 2005). Ensuing empirical studies focusing on implementation put into question the success of the role of the EU as

³ The second and third criterion concern the functioning market economy and ability to take on the responsibility of Union membership.

⁴ Author's interview with European Commission official, Brussels, 8 December 2010.

⁵ Author's interview with Croatian Ministry of foreign affairs official, Brussels, 10 November 2010.

a democratising force responsible for the improved minority policies (Hughes et al., 2005). This latter strand of research also concluded that in some cases the EU has fostered inter-ethnic cooperation, whereas in others it has increased polarisation (Tesser, 2003, Schwellnus et al., 2009, Sasse, 2009). Taken as a whole, one cannot make a general conclusion on the EU's role because of the significance of the contextual factors and the need to examine conditionality in light of its interaction at the national level.

Whereas most of the research on the role of the EU in the accession process and minority policies has focused on Eastern enlargement, nowhere has the minority issue been as prominent as in the former Yugoslav countries. This region was plagued by wars and conflicts for the entire decade of the 1990s. The status and rights of national minorities stood at the core of the Yugoslav wars between Serbia, Croatia and Bosnia in the first half of the 1990s as well as the Kosovo and Macedonia conflicts of 1999 and 2001 respectively. Moreover, with the continuous increase of the number of the post-Yugoslav states, most recently with the independence of Montenegro in 2006 and Kosovo in 2008, the significance of the minority issue in this specific region has been further amplified. In response, academic literature has been in agreement that the democratisation of this region depends on the management of minority issues (Gordon et al., 2008, Blitz, 2008).

At the same time, the EU has been continuously involved in the national minority policies of this region. In fact, minority protection was required for recognition of the independence of the former Yugoslav states even before the formalisation of the 1993 Copenhagen criteria through an international arbitration Commission (i.e. the Badenter Commission). This Commission was vested with a mandate to "rule by means of binding decisions upon request from *valid Yugoslavian authorities*", on the basis of rights of minorities (Pellet, 1992). De Witte (2002) questions this request that "came from the side of a group of countries [i.e. the EU] that had never before taken, as a group, any internal or international action in the field of minority protection" (p.141). As a result, it has been commonly argued that the "concern for minorities [in the EU] is primarily an export product and not one for domestic consumption" (De Witte, 2002 p.139).

In addition, since 1997 these countries have also been subject to extensive EU conditionality in relation to minority policies through the EU's Regional Approach as a mechanism of structuring conditionality towards the Balkans. Over the years the shape of conditionality changed through the

introduction of the 2001 Stabilisation and Association Process (SAP), the 2003 Thessaloniki Agenda and the recognition of the countries in the Balkans as potential candidates for EU accession in 2004/2005. Specifically in relation to national minority policies, the EU in the Western Balkans enlargement further formalised its conditionality through the establishment of a separate chapter in the accession negotiations in 2005. Chapter 23 in the accession negotiations deals specifically with judiciary and fundamental rights, the latter including national minority rights as well. Besides engaging through its enlargement architecture, the EU was also involved on the ground in these countries by acting as a co-signatory or a guarantor of peace agreements, especially in Bosnia, Macedonia and Kosovo. This comprehensive type of the EU conditionality has been described in academic literature as a “a multidimensional and multi-purpose instrument, geared towards reconciliation, reconstruction and reform” (Anastasakis and Bechev, 2003 p.3). As part of all these various forms of engagement, minority issues were given prominence in the criteria for EU accession.

In light of the significance of the national minority issue in the Western Balkans and the EU's involvement in this policy area, this thesis examines the role of the EU in shaping minority policies in Macedonia and Croatia since the launching of the Regional approach in 1997 until 2012. The two countries are instructive cases as both have had recent armed conflicts involving the minorities on their territory and were the first official candidates for EU accession in the region since 2004/2005.⁶ Due to this qualitative change in their status, the thesis will focus separately on the role of conditionality before and after 2005 in the empirical analysis. By focusing on EU conditionality in the Balkans, the dissertation builds upon the findings of the literature on the Eastern enlargement which have stressed the need for contextualised analysis of the EU's impact, especially in the candidate countries for accession (See Rechel, 2009b, Sedelmeier, 2006). While the study of the role of the EU in minority policies in the candidate states has originated and evolved in the Eastern enlargement, the Western Balkans as a region next in line for accession has received much less attention in this regard (See Gordon, 2009). This thesis aims to fill this gap and to provide a thorough analysis of the on-the-ground operation of conditionality in this region. Theoretically, it contributes to debates on the link between Europeanisation by conditionality and democratic consolidations in post-communist countries.

⁶ For more see section 1.5 Countries and case selection.

1.2 Why this study?

Despite the numerous studies of the wars and conflicts in the Balkans, including academic and policy analyses of national minority policies from the perspective of post-conflict reconstruction, the particularities of the region's EU accession have remained under-researched. Specifically in relation to the case studies, most of the literature in relation to Croatia is linked to the Yugoslav wars and post-war reconciliation processes. Recent examples include a 2010 special issue of Europe-Asia studies entitled *Croatia after Tudjman: Encounters with the Consequences of Conflict and Authoritarianism*, which in relation to minority conditionality deals solely with the return of refugees which are not in the focus of this thesis (Djuric, 2010). Similarly, the unique consociational system in Macedonia established with the Ohrid Framework Agreement (OFA) has put the country in the spotlight of power-sharing and conflict resolution studies (Bieber, 2005b, Ilievski and Taleski, 2009). Moreover, in a special issue of 2011 Europe-Asia Studies dealing with EU conditionality the authors examine various aspects of EU conditionality in the Western Balkans, but not minority policies specifically (See Bieber, 2011b). Letschert has analysed the two countries as case studies in relation to the work and cooperation between three mechanisms in the field of the protection of national minorities; the OSCE High Commissioner for National Minorities (HCNM), United Nations (UN) Working Group on Minorities and the CoE Advisory Committee on Minorities, without dealing with the EU (See Letschert, 2005).

In comparison to the extensive research conducted in relation to the 2004/2007 enlargement the region's EU accession processes have been largely neglected. Studies on the Europeanisation of different policy areas in both countries have appeared recently, however, they do not deal with the specific policy area under consideration of this thesis. In a recent volume edited by Elbasani (2013), the Europeanisation of the Western Balkans is studied in a variety of policies, from a broader perspective, without a detailed examination of national minority policies. Chatzigiagkou (2010) has examined the Europeanisation of the judiciary, civil service and regionalisation in Croatia in light of EU accession. Trauner specifically deals with examining the routes of influence of the EU in relation to the visa liberalisation policy and justice and home affairs in the two case studies focusing on rule adoption (Trauner, 2009a, Trauner, 2011). There is general work on the development of EU political conditionality in relation

to refugee return and regional reconciliation processes, which is not in the primary focus of this thesis (See Petričušić 2004, Djuric, 2010). Recently, the role of the EU in conflict transformation has been studied by Braniff (2011), focusing on the cases of Croatia and Serbia. Koinova (2011) has studied the changing nature of EU conditionality in Macedonia solely focusing in general on human rights. However, the role of EU conditionality in minority policies in the two cases has not been studied, hence, this thesis foremost fills this identified gap in literature.

Second, while extending the research agenda on conditionality to the Balkans, this thesis studies this instrument in a qualitatively different setting in comparison to the Eastern enlargement in several ways. As explained in the previous section, in the Western Balkans enlargement the European Commission included conditionality on minority policies as a formal part of the accession process in a separate chapter of the negotiating structure. In the Eastern enlargement, national minority policies constituted a part of the political criteria, which were assumed to have been fulfilled before the start of the negotiations. In 2005, however, the Commission established a new chapter in the negotiating structure which deals with judiciary and fundamental rights, including national minorities as a result of the experience with the Eastern enlargement and the nature of the candidates in the Western Balkans (See EC, 2005c). With this policy change, national minority policies were given prominence in the negotiations for EU accession.⁷ Against this background, studies separately the pre-2005 and post-2005 period. Croatia is especially instructive for this purpose, having in mind that it was the first country to negotiate under this new structure of the *acquis*. Relying on primary data from fieldwork in Croatia obtained at the time of the negotiations of this specific chapter, this thesis provides findings relevant for the accession negotiations with the other Western Balkan countries.

Third, besides establishing this new chapter, the Commission also introduced the tool of benchmarking in the accession of the Western Balkans. Benchmarking involves setting of both legislative requirements and evidence of their implementation in the negotiations, which was not the case in the 2004 enlargement. In the region studied in this thesis (as well as Bulgaria and Romania), the minority policies conditionality has been extended further than “adoption” of

⁷ Recognising this idiosyncrasy, the presented analysis follows a temporal logic, i.e. the role of the EU in this policy area is analysed pre and post 2005 in separate chapters of the thesis. For more, see methodology chapter.

rules and policies into establishing an implementation record. As Hughes et al argue, we need to “distinguish better between the transposition of the *acquis*⁸ into domestic law, which the EU’s own Regular Reports tend to equate with a successful outcome of conditionality, and the actual implementation of policy” (Hughes et al., 2005 p.11). At a general level, the region has been considered to respond with ‘fake compliance’ both at the level of rule adoption and implementation (Noutcheva, 2007). On the other hand, the European integration and minority policies have usually been studied through research projects which were in most cases limited to the legal dimension of minority protection, without extensive use of the conditionality paradigm as is the case in this research (See Lantschner et al., 2008). Incorporating the study of implementation, this thesis will also link the findings to the literature arguing for the notion of shallow Europeanisation (See Goetz, 2005). Hence, in addition to the extension of the ‘*minority criterion*’ to the underlying policy areas as mentioned above, this thesis will study the implementation of minority policies.

Fourth, the dissertation extends the analysis of the role of conditionality in minority policies to new policy areas which have become elements of EU conditionality in the Western Balkans accession process. Already in the case of the eastern enlargement Pridham (2007) concludes that “political conditionality [including minority policies] has become broader in its scope, [and] much tighter in its procedures” (p.468). As a result of this wider scope of political conditionality the Commission has pursued a more interventionist attitude in comparison to the previous enlargement, a tendency noted already with respect to Bulgaria and Romania (Phinnemore, 2006, Pridham, 2007). For example, in Croatia and Macedonia the EU has dealt with novel policy areas which were not included in the previous enlargement. These have involved policies such as representation of minorities in the public sector, setting up and functioning of councils for national minorities etc, related to the implementation of the domestic legislation in these countries.⁹

Fifth, the thesis brings insight into the operation of conditionality in countries with organised minority representation, which was not the case in the previous enlargement (Sasse, 2009 p.27). While in the Eastern enlargement the

⁸ *Acquis communautaire* is a term referring to the European community legislation and case law. In this thesis it will be referred short as *acquis*.

⁹ Refugee return and cooperation with the ICTY have been separate areas of EU conditionality which have been analysed in detail in literature and will not be examined in this research, except when relevant for the context setting.

EU contributed to the creation of domestic political space for minority participation such as in Romania and Slovakia (Sasse, 2009 p.27), in the Western Balkans the minority parties are a feature of the political space (Bieber, 2008a). As a result, the organized minority interests, especially the political parties are active agents in the implementation of conditionality. Recently, research has identified their significance for the study of conditionality and minority policies. Sasse (2009), thus argues that “the EU’s encouragement of ethnic power sharing as part of regime change and domestic political references to the EU’s minority condition can fuel political mobilisation, especially (but not only) in the presence of ethnopolitical parties” (p.28). At the same time, both countries examined in this thesis provide insight into different types of *ethnicized* party systems. Taleski argues that the ethnic identity is a “key feature of the party system” that “in a sense, all political parties in Macedonia are ethnic parties” Taleski (2008 p.139). On the other hand, according to Petričušić (2008), “a fully mobilized ethnic party system has never been in place in Croatia”, because of the lack of Serb representation in Parliament in the early 1990s (p.68).

Lastly, the study also offers insight to the functioning of conditionality in a transformed EU political setting than was the case in the 2004 accession. In fact, the foundations of the Western Balkans accession process are qualitatively different when compared to the Eastern enlargement. The Eastern enlargement was underpinned by the principle of returning to Europe and took place in a period of relative economic prosperity with a relatively stable commitment from the Union to the enlargement process. The narrative that has accompanied the Western Balkans accession “has been essentially negative and imbued with a sense of risk” as a result of the conflicts that have plagued the region (Phinnemore, 2013 p.33). In addition, the economic and political crises in the Union, as well as the post-2005 constitutional treaty crisis have all contributed to diminished importance of the enlargement agenda. Hence, besides studying the extended notion of conditionality, this study is also going to shed light to its operation in a qualitatively changed environment in comparison to the 2004 enlargement.

Building on existing research on the role of the EU in shaping minority policies, this thesis has two main objectives. First, it develops the agenda set by the literature on the previous enlargement especially in relation to studying the role of EU conditionality in the domestic context and its relationship with democratisation processes. Second, it contributes to filling a gap in literature

research of the accession process for the Western Balkans. The study of the accession of this region, as elaborated above, is linked to idiosyncrasies both on the side of the EU and in the region, which underpin the originality of this thesis. In relation to the EU, the conditionality in relation to national minority policies has been further structured and formalised through the introduction of a specific chapter and the insistence on an implementation, rather than rule adoption. Moreover, the general attitude towards the Western Balkans enlargement has been less popular both among the EU public and elites (See Di Mauro and Marta, 2012). On the regional side, the minorities are of increasing importance foremost because of the legacy of the conflicts, but also because of the more structured organisation of minority interests in these countries.

1.3 Framework for analysis

As a study of the role of the EU in shaping national minority policies in the accession process, this dissertation draws upon the contested concepts of national minority (community), Europeanisation and conditionality. First, the analysis of any aspect of national minority policies is accompanied by the lack of a common definition as to who constitutes a minority. For Jackson Preece (2005), these disagreements exist because “the problem of minorities often manifests itself in efforts to distinguish between those who belong to a political community and those who do not” (p.9). The identity of those persons who constitute a minority is dependent upon the political and historical context, but also influenced by the international society (Jackson Preece, 2005 p.182). Brubaker in this direction argues that the national minority is “a dynamic political stance, or, more precisely, a family of related yet mutually competing stances, not a static ethno demographic condition” (Brubaker, 1995 p.112). While recognising this definitional problem, it is beyond the scope of this thesis to attempt to develop definitions of minority. This position is rather similar to scholars who argue that “the non-existence of a definition has never been an absolute obstacle to the drawing up of international instruments containing minority provisions [as] the essential elements of the minority concept are known” (Andrýsek, 1989 p.14). Due to these definitional challenges, academic research has been adopting separate definitions of minority policies in light of the specific elements under analysis. Vermeersch (2003) in his analysis of minority rights in CEE understands the term ‘minority rights policies’ as a “range of policies which have in common that they all in one way or another recognize and accommodate the demands of

communities distinguishing themselves from majority populations by religious, linguistic, cultural and other characteristics that are considered ethnic” (p.1). While accepting this definition for the purposes of this research, the dissertation recognises the contested nature of minority policies in general and in the EU context.

The lack of a common understanding in this policy area in the EU is also reflected in the variety of terms that the European Commission uses in its reports, i.e. minority rights, rights of persons belonging to minorities, which are mostly linked to the national definitions of the country in question.¹⁰ It has been also argued that the Commission adopted its own definition of minorities which included all the communities residing in these countries, and was not limited to the formal recognition of minority rights, but also included implementation (De Witte, 2002 p.142). Recognizing the importance of De Witte’s argument, this research will consider minority protection policies as a wide set of both formal policies, but also their respective implementation. Moreover, the research relies on the national definitions of national minorities which have evolved over time, without intending to go into normative and conceptual debates on national minorities.

Conceptually, the study of the minority policies in the EU accession process draws upon the study of the processes of Europeanisation as well as democratisation in the conditions of post-communism.¹¹ Research examining the link between EU accession and the candidate countries has traditionally been framed in an Europeanisation and/or conditionality framework.¹² In its broadest terms, Europeanisation for the purposes of this thesis is understood as “domestic adaptation to European regional integration” (Vink and Graziano, 2007 p.7). The majority of studies have addressed the conditions under which Europeanisation takes place, as well as its impact on policies, polity and actors in the first instance on the EU member states (Risse et al., 2001). In the latter half of the 2000s studies appeared using and adapting this concept for the candidate countries for EU accession focusing on the instrument of conditionality (Schimmelfennig and Sedelmeier, 2005b, Grabbe, 2006). The use of conditionality is the essential feature that separates the processes of Europeanisation of the member states

¹⁰ Author’s interview with European Commission official, Brussels, 8 December 2010.

¹¹ For more details as well as criticisms see third chapter.

¹² Elaborated in more detail in the third chapter.

and the candidate countries, as a feature of the latter group that is of interest to this research.

Although widely used in the literature, the concept of conditionality is subject to various understandings, two of which are of immediate relevance for this thesis (Schimmelfennig and Sedelmeier, 2004, Sasse, 2005). First, from a rational institutionalism viewpoint, conditionality is understood as “a bargaining strategy of reinforcement by reward, under which the EU provides external incentives for a target government to comply with its conditions” (Schimmelfennig and Sedelmeier, 2004 p.662). The success of conditionality from this standpoint depends on the high credibility of EU conditionality and the low domestic costs of rule adoption (Schimmelfennig and Sedelmeier, 2005b).¹³ National minority policies, however, as elaborated above belong to the most contested issues of political life. In a recent analysis of the effectiveness of the external incentive model, Schimmelfennig (2008) concludes that “in the Balkans the troubles in the EU accession process are related to the legacies of ethnic conflict and are likely to create significant political costs to the target governments because of their high relevance for national identity” (p.932). Thus, while useful for the study of *acquis* conditionality, the high domestic costs associated with minority policies diminish the usefulness of this approach for the study of this policy area.

The alternative approach to conditionality defines it through the “process of its application rather than by an ideal-type assumed power relationship” (Hughes et al., 2005). The focus on the process of its application entails the studying of the interactions between the EU and the national level as well as the continuity and change in conditionality. Moreover, Hughes et al. (2005) have argued that EU conditionality “includes not only the formal technical requirements on candidates but also the informal pressures arising from the behaviour and perceptions of actors engaged in the political process” (p.2). Whereas the former “embodies the publicly stated preconditions [...] of the ‘Copenhagen criteria’ and the [...] *acquis*”, the latter “includes the operational pressures and recommendations applied by actors within the Commission [...] during their interactions with their CEEC counterparts” (2005 p.26). This approach therefore attempts to unpack the operation of conditionality, while recognising

¹³ For more on this see section Models for analysing conditionality in chapter three.

the formal *documented* conditionality as well as the importance of the interactions between the EU and national stakeholders.

Moreover, as Hughes et al argue, “if the logic of conditionality works in practice we should be able to track clear relationships between the Commission’s use of conditionality and the compliance of candidate countries through policy, or institutional adjustments and normative change” (Hughes et al., 2005 p.2). In line with these assessments, this study approaches conditionality through tracing the construction of conditions at the EU level, their application and understanding at the national level and its development over time. First, the study of the devising of the EU conditions is necessary due the lack of benchmarks in the EU legislation on minority policies and the fleeting nature of the criteria. Second, the examination of the minority criterion in the domestic political context is used in order to account for domestic actors’ interference in the application of conditionality and to avoid overemphasizing the role of the EU (See Sasse, 2009). Third, the analysis over time (in this thesis between 1997 and 2012) provides for the study of both continuity and change in conditionality pre and post-2005. Thus, it does not understand conditionality as a fixed variable, but as a process amenable to change, thus aiming to unpack its operation.

The process-based understanding of conditionality underpins this study due to three major reasons. First, the contextual nature and flexibility of the EU criteria on national minority policies complicates their study in a rational incentive model. This specificity is linked to the EU’s reliance on assessments of other international organisations such as the CoE and OSCE as well as the use of national legislation provisions as conditions. In relation to the former, it has been argued that EU conditionality in the area of minority protection is best understood as the cumulative effect of different international institutions (Sasse, 2005). At the same time, research on the Eastern enlargement, noted that many recommendations of these international organisations remained ignored until the EU included them in their monitoring mechanisms (Rechel, 2009a). Such is the case with the CoE FCNM which is the only binding instrument in relation to national minorities. These assessments therefore, justify the focus on the EU in shaping national minority policies, while at the same focusing on how the EU has used these other international instruments, which is the case in this thesis.

Second, in addition to reliance on other international organisations, the EU has also used national legislation as elements of conditionality. In these cases, the EU is “relying on domestic rules and agreements [which] is advantageous as it

enables the EU institutions to focus their policy on the specific local situation, but it risks that the parameters of the situation determine the standards (normative assumptions) underlying EU policies” (Brusis, 2003 p.4). The reliance on national legislation and agreements makes conditionality increasingly dependent on the context and national actors, thereby complicating its analysis as an independent variable. While not going into normative debates on the position of the EU, this thesis will study how the EU has shaped national minority policies through relying on national legislation in the two cases. Focusing specifically on this element, the thesis will shed light on the role of domestic actors, as integral elements of the conditionality mechanism.

Third, rather than concentrating on the direct impact of the EU, this thesis studies the process of applying accession conditionality for the purposes of unpacking its operation. In this respect, studies of Europeanisation have shown that due to the simultaneity with the process of democratisation, demonstrating direct impact is increasingly difficult. In fact, the focus on the direct EU impact in the study of shaping minority policies runs the risk of overestimating the role of the EU (See Hughes et al., 2005, Brusis, 2005b, Grabbe, 2006). This potential is amplified in the external incentives model, which according to Brusis (2005b) “does not allow the interference that the domestic change is driven by EU incentives because the Union applies conditionality or because domestic actors justify their decision as driven by EU conditionality” (p.297). At the same time, research has shown that especially in areas not covered by the *acquis* domestic actors have played the decisive role in the implementation and outcome of conditionality (Brusis, 2005b). While the alternative of studying the transformation of national minority policies in candidate countries without the role of the EU is not viable, studying the interactions between the EU and domestic level, as is the case in the process-based approach could minimise this risk. In this vein, Pridham has supported research “through focusing on interactions, and therefore two-way effects, between sets of international and domestic factors” (Pridham, 2005 p.10).

As a study of the role of the EU in shaping minority policies in democratising settings, this thesis ultimately will shed light on the relationship between Europeanisation through conditionality and democratic consolidation.¹⁴ In fact, “the components of ‘democratic conditionality’ [including minority

¹⁴ For more details see chapter three.

policies], as defined by the first Copenhagen criterion, regain in significance as a litmus test of the medium- to long-term consolidation of the polities in question” (Sasse, 2008 p.843). For Kymlicka and Opalski (2002) “the ability or inability of countries in Eastern Europe to resolve their ethnic conflicts has profoundly affected the process of democratisation” (p.3). The crucial role of minority policies for democratic consolidation has been underlined in literature by concluding that consolidation requires that there is consensus of the citizens of a territory on the legitimacy of the established political unit (Linz and Stepan, 1996 p.27). In this respect, as elaborated above, research has warned that firm trends cannot be determined in relation to the democratising role of EU conditionality. In a cross-country study of the Eastern enlargement, Rechel (2009b) has concluded that “much depended on the point of departure at the end of communism, the ethnic make-up of the country, historical legacies, and whether the country experienced territorial changes or not” (p.227).

1.4 Research questions

In light of these assessments, this thesis studies the role of the EU in shaping national minority policies in Croatia and Macedonia. It examines how the EU has interacted with domestic actors in relation to national minority policies between 1997 and 2012 and the implications of this involvement for the process of democratic consolidation in the two countries. It argues that the effectiveness of this instrument has been constrained by its lack of consistency and instrumental use by domestic actors. As a result, the EU’s involvement in this policy area could potentially lead to increased inter-ethnic polarisation. In order to analyse these dynamic relationships the thesis focuses on the following research questions:

1. How has EU conditionality on national minority policies in Macedonia and Croatia been implemented between 1997 and 2005, and post-2005?

This research question is the starting point of this thesis with the purpose of unpacking the operation of conditionality in the two countries. The temporal dimension is underpinned by the qualitative shift in EU conditionality which occurred in 2004 with the Eastern enlargement as well as with the inclusion of national minority policies in a chapter of the negotiations. Thus, this year is broadly considered in literature as a breaking point for the shape of conditionality (Pridham, 2007). Recognising this change and focusing on this temporal distinction, the dissertation will trace the qualitative changes before and post

2005 in terms of national minority policies in the two case studies in separate empirical chapters.

2. How has the EU used the Council of Europe Framework Convention on National minorities and the national legislation as elements of EU conditionality on national minority policy between 1997 and 2005 and post-2005?

Given the lack of a common EU standard on national minority policies, the two elements that have been used by the EU in structuring and stipulating its criteria have been the CoE FCNM and national legislation in the respective candidate countries. Research has largely been an consensus that “over time the FCNM of 1995 became the Commission’s primary instrument for translating the minority criterion into practice” (Sasse, 2005 p.5). This research question will be addressed through a study of the evolution of the use of these specific components in the EU, national documents and through interviews with stakeholders in chapters five, six and seven of the thesis. Whereas the first two deal with both elements at macro-policy level, chapter seven deals closely with the representation of national minorities in the administration, as a specific national policy facilitated by the EU.¹⁵

3. How consistent has EU conditionality been in relation to national minority policies in Croatia and Macedonia between 1997 and 2005 and post-2005 within the specific case studies?

The literature review and the fieldwork data for this thesis have both indicated that in order to be effective in shaping policies, EU conditionality needs to be consistently applied over a longer period of time. At the same time, experience of the last enlargement shows that in this policy area EU conditionality is plagued by lack of consistency and clarity (Sasse, 2005). In order to address this question the thesis throughout its empirical analysis examines the consistency of the EU conditions in the EU and national documents, as well as among the stakeholders interviewed. This research question is closely related to the first two, since the thesis will aim to assess whether there is a significant change in the consistency before and post-2005, as well as in the structuring elements elaborated in the previous question.

¹⁵ See section on structure below.

4. What role have domestic actors played in the application of conditionality in relation to national minorities in Croatia and Macedonia between 1997 and 2012?

Whereas the first three research questions largely address the EU side of conditionality, as elaborated above this dissertation approaches this instrument through the interactions between the EU and the national level. For this purpose it considers the domestic actors as an integral part of the conditionality instrument in line with literature. Literature on the previous enlargement has already pointed the decisive role of domestic actors in the operation of conditionality in policy areas not part of the EU acquis, as is the case with national minority policies (See Brusis, 2005b). This research question will bring insight from the Balkans, where, as already explained, the minority issue is of high salience in conditions of organised minority interests and increasing EU involvement in comparison to the Eastern enlargement.

5. What are the implications of the Europeanisation by conditionality in relation to minority policies for the democratic consolidation of Croatia and Macedonia?

Through its involvement in national minority policies, as an issue area of high political importance, the EU has gained a role the democratic consolidation of the countries concerned. Building upon the findings of the previous research questions, this last dimension is examined by looking into specific cases when the EU has advanced national minority policies, but also through cases where the EU's involvement could lead to further polarisation or further embedding of potentially divisive policies. Though the uncovering of the relationship between the processes of Europeanisation and democratisation is a complex endeavour, this research through its largely contextual approach can draw preliminary conclusions on the specific role of the EU in the countries studied. With this question, the thesis advances the research on the Eastern enlargement to the Western Balkans.

The research questions and the theoretical approach of this study underpin its methodological approach, presented in detail in the following chapter. The study employs a before and after approach in relation to 2004/2005 and process tracing of official EU and national documents and relies on extensive fieldwork data. The thesis is modelled to reconstruct the practicalities of the European accession process as closely as possible, both through the documents and examining the views of a wide range of stakeholders. The latter include but are not limited to civil service involved in EU accession, civil society and

international organisations etc. The before and after approach is applied through the structuring of the analysis in two chapters, one in relation to the 1997-2005 and the other dealing with the post-2005 period. Within these time frames the thesis conducts between country comparisons. Lastly, the thesis also presents a micro-study of the representation of minorities in the public sector, as a novel policy in the Western Balkans enlargement, in order to confirm its findings. In light of the above explained theoretical approach the analysis is conducted at three levels. The data collected through archive and field work are analysed at three levels. First, the research examines the devising of the EU priority through the formal documents from the EU and interviews with EU officials. Second, the study looks at the domestic response of the national governments to the EU conditionality through the national strategic documents, adoption of legislation and policies and their implementation. Lastly, the interview data from the national level provide insight into the local understanding of and implementation of conditionality in relation to minority policies.

1.5 Country and case selection

Croatia and Macedonia are selected for the study of the role of the EU in shaping national minority policies primarily due to their contractual relations with the Union and the significance of the minority issue at the national level. The two countries were the first official candidates for EU accession in the Balkans since 2004 and 2005 respectively, thus, providing a sufficient time period and data for analysis. During the research and writing of this dissertation, both Montenegro and Serbia have been granted the status of official candidates for accession. However, their experiences are qualitatively different since Croatia and Macedonia have both had a significant experience as candidate countries when the research was launched. Among the Yugoslav successors, Slovenia became a member of the EU in 2004 in the Eastern enlargement; however, the country is largely homogenous and was affected by the EU in different conditions as elaborated above; hence, it does not present a comparable case.

Despite the formal similarities between the two case studies, their experiences of the pre-accession process have also been unique and different. Croatia negotiated its EU membership from 2005 until mid-2011, when a date for accession was set for mid-2013. Macedonia, despite holding the status of a candidate country since 2005, still, has not commenced the negotiations. The Commission's 2009 recommendation for starting of the negotiations has since

been repeated annually. The Council decision for launching of the negotiations is nevertheless conditional upon the resolving the dispute over the country's constitutional name with Greece.¹⁶ Hence, the two countries will provide significant insight into the various incentives that operate in different contractual relations with the EU. In this respect, Avery and Cameron (1998) have argued that the opening of the negotiations differentiates the status of the countries because it possibly implies the intention of the Union to conclude them and accept the country as a member.

Timeline: Relations of both countries with the EU

(A more detailed timeline is provided in the appendix)

Milestones in the EU relation with the countries	Croatia	Macedonia
Regional Approach	April 1997	April 1997
Signing of SAA	October 2001	April 2001
Application for membership	February 2003	February 2004
Opinion on application	April 2004	October 2005
Candidate status granted	December 2004	December 2005
Recommendation for opening of negotiations	December 2004	November 2009
Negotiations started	October 2005	n/a
Negotiations concluded	June 2011	n/a

The thesis focuses on national minority policies in these two cases due to several interlinked reasons. First, minority policies are usually considered to be the ultimate test for EU conditionality (Sasse, 2005) due to high domestic political costs and the lack of a common policy at the EU level. Thus, they are a fertile ground for studying the role of the EU in shaping policies at the national level, as the main objective of the thesis. At the same time, because of the EU's lack of competence, they're significant for studying the implementation and consistency of conditionality. Second, this thesis examines minority policies also as a result to their increasing importance for democratic consolidation in the conditions of post-communism. In an article assessing the role of the SAP, Gordon (2009) points

¹⁶ For more on this see chapter on contextual background.

that “the satisfactory resolution of inter-state relations and intra-state majority-minority must lie at the heart of any long-term political stabilisation of the region” (p.336). In such conditions, the role of EU conditionality in relation to national minority policies is also of increasing importance for the democratic consolidation, and is addressed in the last research question of the thesis.

In both countries under examination minority policies are an issue of everyday importance due to the ethnic heterogeneity, the recent experience of conflicts, as well as unresolved issues of state and nation building. In Croatia, although numerically the national minorities comprise less than 10% of the population, the related policies are significant foremost due to the legacy of the recent Yugoslav wars that exacerbate the significance of minority accommodation.¹⁷ In light of the sensitivity of this issue, for the purposes of EU accession, Croatia has been required to implement relevant legislation, i.e. the Constitutional Law on National Minorities (CLNM) and to facilitate the return of predominantly minority refugees in the country. In this vein, it has been argued that “the unresolved situation of the Serbian minority undermines Croatia’s claims of democratic maturity” (Blitz, 2008 p.125).

Similarly, national minority issues have dominated Macedonia’s political agenda since independence. This tendency has been underlined by domestic and international analysts, arguing that the main challenge facing Macedonia in the period of independence has been “the management of aspirations, attitudes and expectations of the population, incorporating a large minority group” (Miller and Ivanovic, 1999 p.318). National minorities (non majority communities) make up around 35% of the population, including a large 25% Albanian community.¹⁸ Domestic intellectuals have also commonly argued that more than in the case of any other transition state, Macedonia’s prospects “are critically dependent on the willingness of the EU to support good government at home with realistic prospects of international integration abroad” (Muhic, 1996 p.246). Overall, in both countries minority protection policies are of increasing importance, as also has been the role of the EU in their management.

The two countries provide a fertile ground for the study of the role of the EU in shaping minority policies also due to the differences in terms of their state organisation and role of organised minority interests. First, whereas Croatia is a

¹⁷ For more on this, see chapter on context and population by ethnicity in Annex II.

¹⁸ For more, see chapter four on context.

unitary state, Macedonia has a consociational system with a power-sharing agreement between the two major ethnic groups. Consociationalism consists of several institutional features such as grand coalitions in parliament, proportionality rules for allocation of ministries and at all levels of government, group autonomy and minority veto (Lijphart, 1977). Looking at the impact in a unitary state as Croatia and a consociational system as Macedonia provides insight into the impact of EU in varying domestic arrangements. Second, in both countries minority interests are fairly organized, although they play different roles. Whereas in Croatia minority parties have not always participated in governments, in Macedonia organized minority interests are strong due to the importance of ethnic cleavages. In this manner, the study will demonstrate whether there are substantial differences in the impact of the EU in countries with different domestic systems of minority protection and organisation of interests, an element contributing substantially to the originality of the research.

At the same time, Macedonia and Croatia are not usually compared in the academic literature. In comparative research, Macedonia is commonly grouped with Bosnia and with Kosovo due to the division of the countries upon ethnic lines, their power-sharing agreements and the increasing role of the international community in these cases (See Bieber, 2005a, Vasilev, 2011).¹⁹ In regional studies, Croatia is usually analysed along with Serbia due to their conflicting past as well as their relations with Bosnia (See Gagnon, 2006, Maleševic, 2002). However, since the starting point of this research is the EU accession process, Macedonia and Croatia are suitable examples for study due to the fact that both countries signed the SAA and applied for membership at the same time, significantly before the other countries in the region. Adopting this position, Trauner (2011) has conducted an analysis of the justice, freedom and security reforms in both countries using the external incentives model. In his research Trauner (2011) focuses on rule adoption with respect to the *acquis*, the process of visa liberalisation and preparations for Schengen. As such, his work is largely confined to the adoption of norms, rather than reflecting on the implications of these processes, especially conditionality, for the democratic consolidation of the countries studied. His research therefore, while confirming the validity of the

¹⁹ Though with unconsolidated statehood, Macedonia has not been considered as a minimalist state, as Kosovo and Bosnia in the work of Bieber on political conditionality, see BIEBER, F. 2011a. Building Impossible States? State-Building Strategies and EU Membership in the Western Balkans. *Europe-Asia Studies*, 63, 1783-1802.

study of the two countries in the context of EU accession, examines an area highly regulated by the *acquis* and uses different theoretical lenses.

Overall, the two case studies share similarities in terms of their common historical background and their current contractual relations with the EU. However, there are substantial differences in the contextual importance of minority protection and as a result; they provide sufficient ground for examining the impact of EU political conditionality in relation to a variety of explanations and actors. Lastly, whereas work has been done generically on minorities in relation to the conflicts in both countries, the literature examining their EU accession is limited. The examination of their experiences will provide significant reference information for the rest of the Western Balkans in its EU accession. By adopting this approach, the study also builds upon findings of Europeanisation literature arguing that “comparative insights are desirable, precisely in order to establish to what extent the conceptual frameworks developed in the context of eastern enlargement allow us to understand candidate country Europeanisation” (Sedelmeier, 2006 p.20).

1.6 Structure

This dissertation consists of eight chapters. Having presented the objective and the research questions in the introduction, the second chapter outlines the methodology of the study. This chapter presents the methodological approach of the thesis in terms of the data collection and analysis. As the thesis draws upon extensive fieldwork and interviews with stakeholders it reflects on the rationale behind the field research, as well as their advantages and shortcomings for the study. In its second part, this chapter explains the data analysis through a comparative case study method and process tracing, which underpin the dissertation. It also reflects on the logic of the periodisation of the research, as presented in the introduction. The objective of this chapter is to illustrate how the study approaches the EU’s role in shaping national minority policies through looking at EU conditionality as a process. At the same time it illustrates the method of analysis employed in the empirical chapters.

The following two chapters present the theoretical and contextual foundations of the study. Chapter three examines the conceptual tools that are used in this dissertation, focusing on Europeanisation by conditionality and its relationship with democratic consolidation. For this purpose, it first presents inquiry of Europeanisation and conditionality, as the conceptual tools which have

underpinned the study of the role of the EU in domestic politics, with a focus on the candidate countries for accession. Arguing for a broad definition of Europeanisation, the chapter nevertheless singles out the mechanism of conditionality as the main instrument at work in the EU accession. The chapter studies the external incentives model and the process based understandings of conditionality, as the two approaches which have shaped the study of this phenomenon. The chapter justifies the use of the latter approach in this thesis due to the lack of standards in the policy area and the dependence on contextual factors, which were also essential for identifying the research questions of the dissertation. Having elaborated the understandings of Europeanisation and conditionality, the chapter moves on to link the study of these phenomena to the process of democratic consolidation. Highlighting the importance of the national minority issue for democratic consolidation, the chapter posits the EU as an actor which also shapes this process through its involvement. The last, fourth section uncovers the dynamic relationship between Europeanisation and conditionality, uncovering their potentially conflicting tendencies. Overall, this chapter substantiates theoretically the research questions and underpins the empirical analysis that follows.

The theoretical examination is followed by a chapter which studies the legacy and contextual developments in both countries in relation to the national minority question and international actors, specifically the EU. Chapter four thus, complements the theoretical discussion by studying the contextual developments in both countries in relation to the minority question since independence, national minorities and electoral politics, as well as the relationship with the EU. The objective of this chapter is to provide a background to the pre-1997 period as well as the general context of the EU's engagement in both countries, examined in the subsequent empirical chapters. The need for this chapter is a result the contextual nature of the conditions the EU imposes (national legislation and agreements) as well as the interest of the thesis in the role domestic actors. Thus, it does not provide a thorough examination of the minority situation in the case studies, but rather the key defining country features that impact upon both the EU and the national level in the devising and implementation of conditionality, necessary for addressing the research questions.

The bulk of the empirical analysis of the thesis based on the original data collected through the fieldwork is organised chronologically as well as thematically, in the following three chapters. Overall, the thesis examines the

period between 1997 when the Regional Approach was launched and 2012.²⁰ As mentioned in the introductory remarks, 2005 is taken as a critical point for the before and after approach, i.e. the first two empirical chapters study the 1997-2005 period and post-2005 period separately. This organisation of the analysis allows for comparison between the different periods and cases. Thematically, chapters five and six deal with the use of the FCNM and the use of national legislation as an element of conditionality, before and after 2005. The two structuring elements are derived from document analysis and discussions with stakeholders. The last seventh chapter presents a detailed case (micro) study of the representation of minorities in the public sector.

Chapter five presents the analysis of the role of the EU in shaping minority policies in Croatia and Macedonia between 1997 and 2005, i.e. until both countries became candidates for EU accession. Within the specified time frame, the chapter examines the national minority policies within two distinct EU initiatives: the 1997 Regional Approach and the 2001 SAA framework as two distinct periods of EU involvement in the Balkans. The qualitative difference between the two periods is linked to the lack of a membership perspective in the former, whereas with the SAA these countries were considered as *potential* candidates for membership. Focusing on the use of the FCNM as a benchmark and national legislation and agreements the chapter studies the implementation of EU conditionality in this respect, as well as its consistency in the separate elements of analysis. The specific topics studied in relation to the national legislation are determined in accordance with the policies that the EU considered important for each of the countries. In line with the methodological approach, the analysis is based on a study of the links between EU and national documents, as well as interviews with stakeholders.

Along the same chronological and thematic logic, chapter six studies the interactions between the EU and the national level in relation to conditionality post-2005 until 2012. In this period, both countries under examination were declared official candidates for EU membership and were navigating their accession with the regular Progress Reports and the European partnerships. In addition, the respective governments started preparing more detailed documents such as the extensive National Plans for the Adoption of the *Acquis* (NPAA) in

²⁰ The last annual revision of the EU documents available for analysis was at the end of 2012. The thesis nevertheless reflects on major events of 2013 as well: see methodology chapter for more on this.

Macedonia, the National Plan for Integration in the EU (NPIEU) in Croatia and national Progress reports on the fulfilment of the conditions for accession. Furthermore, as elaborated above, the EU introduced a specific chapter in the negotiations dealing with minority policies. Lastly, in 2005 the European Commission launched membership negotiations with Croatia providing further benchmarking through the screening reports on all negotiating chapters, including minority policies. The European Commission also employed several benchmarking exercises for Macedonia through the key priorities of the Accession Partnerships. Focusing on the FCNM and the use of national legislation as elements of EU conditionality, this chapter studies whether and how the new instruments affected consistency of EU conditionality post-2005, the role of domestic actors as well as the implications for the democratic consolidation. Overall, by studying the pre and post-2005 period separately, the thesis conducts an analysis of the evolution of EU conditionality and compares the role of EU conditionality within the two specified periods.

In order to test the findings of the previous two chapters on the role of the EU in shaping minority policies, the seventh chapter presents a micro case study of the policy of representation of minorities in the public sector as a condition for EU accession in Macedonia and Croatia. This policy was singled out in the course of the fieldwork as most prominent element of EU conditionality in relation to minority policies in these countries' accession processes. As a highly politically significant policy area, the representation of national minorities is a fertile testing ground for the role of the EU conditionality in national minority policies, its consistency, the role of domestic actors and its relationship with democratic consolidation. Furthermore, this policy was not studied in the previous enlargement and as such contributes significantly to the originality of the thesis. The chapter complements the discussion of the previous two chapters, by providing further depth of the study of minority related conditionality. This chapter is therefore a micro-study of EU engagement in minority policies in the pre-accession process and addresses all the research questions elaborated above.

The last (eighth) chapter of the thesis reflects on the findings of the empirical research on the role of the EU in shaping national minority policies in the two countries by looking at how EU conditionality was implemented pre and post-2005, its consistency as well as its implications for the processes of democratic consolidation. The chapter looks back at the rationale, theoretical and methodological approach of the thesis and their advantages as well as

shortcomings for the study of conditionality in relation to minority policies. Summarising how the EU has used the FCNM or national legislation and agreements in its conditionality, the chapter illustrates the lack of consistency of conditionality and its changes over time. Given the findings for potential of further inter-ethnic polarisation through the involvement of the EU in national minority policies it questions the positive relationship between Europeanisation by conditionality and democratic consolidation and provides recommendations for further avenues for research.

2. Methodology and methods

This chapter presents the methodology of the study and reflects on the data collection process, the method of data analysis, as well as the periodisation and limitations of the research. The objective of the chapter is to substantiate the use of qualitative methodology and process tracing for the study of minority policies in the EU accession process and to explain how these methods are used in the dissertation. For this purpose, it first deals with the manner of data collection, i.e. the fieldwork process and explains the rationale and the method of interviewing employed. In this respect, it presents the various groups of interviewees and the rationale behind their selection as well as the form of the interviews used. Second, it provides an overview and background on the multitude of official documents, examined in this dissertation. Third, it studies the position of a researcher as a former insider to the processes under examination and the advantages and shortcomings of this role.²¹ Fourth, it substantiates the method of data analysis. Lastly, it recognises the limitations of the adopted approach and reflects on the ways in which this thesis has attempted to overcome them through its research design.

2.1 Data collection – open ended interviews and document analysis

2.1.1 Fieldwork and interviews

This dissertation is based on a combination of desk based research and three fieldwork visits to Brussels, Zagreb and Skopje in the period between September 2010 and July 2011. Each of the field trips lasted three months and they were arranged in accordance with the “timetable” of the EU accession process. Hence, I was in Brussels between September and December 2010, when the European Commission progress reports on all the candidates and potential candidates were issued. Between January and March 2011, I was in Macedonia during the preparation of national strategic documents for European accession. Lastly, the fieldwork in Croatia took place between April and June 2011 when the negotiations on the chapter 23: Judiciary and Fundamental Rights were finalised. National minority issues, especially remaining obligations of Croatia such as the slow progress in the employment of national minorities were high on the agenda in the period of my Zagreb visit. During the course of the fieldwork seventy

²¹ This section is necessary in light of my personal experience as a former practitioner in EU accession process.

interviews (list is provided in the Annex IV) were conducted with representatives of the EU institutions, various departments of the national governments, international organisations and civil society organisations (CSOs). The use of open-ended interviewing in both Brussels and the respective countries under examination contributes to the originality of this study. Although this approach was used extensively in the previous enlargement, this has not been the case in the Western Balkans (On the Eastern enlargement see Hughes et al., 2005, Grabbe, 2006, Pridham, 2005).

The sampling technique was a combination of intentional choice, sampling for diversity and snowballing (by recommendation). The intentionally chosen interviewees were European Commission employees working on the desks for these two countries as well as civil servants of national governments that work directly on EU integration issues. Having in mind my personal experience in the area under research (see section 2.1.3 Role of the researcher), I already had established contacts with some of them or I was referred to a number of the intentionally chosen interviewees. These groups were asked to recommend individuals which they considered could provide useful information for the study. The intentionally identified interviewees were responsible for the minority policies portfolio from the aspect of EU accession in all institutions and afterwards a snowballing method was applied. In the case of the CSOs the sampling was conducted in accordance with fulfilling the criteria needed for the study, i.e. dealing with minority rights or monitoring EU accession in relation to the political criteria.

For the purposes of the thesis representatives of three EU institutions were interviewed (European Commission, European Parliament and the European Council). These include the European Commission desk officers responsible for the respective countries in the Directorate General (DG) for Enlargement in Brussels as well as the European Commission delegations in Skopje and Zagreb. In the EP, the Members of the European Parliament (MEPs) that have acted as rapporteurs on both countries were also interviewed. In the Council the officer dealing with Macedonia due to its specific on-the-ground circumstances was interviewed, as there is no corresponding position for Croatia.

At the national level, my primary interlocutors were civil servants working in the government on EU integration matters. In Macedonia this included the central government office – the Secretariat for European Affairs, as well as the Ministry of Foreign Affairs. In Croatia, the primary target group was the staff in

the working Ministry of Foreign Affairs and European Integration. Civil servants working in the Ministries of Interior and also the Ministry of Justice were also interviewed since the fulfilment of the specific requirement from the EU on minority protection is in their portfolios. The interviewing of the line ministries representatives in addition to the central bureaucratic organisations which are in contact with the EU was necessary because representatives of 'sister institutions' with regular contact at the EU level through socialisation develop a common understanding of these processes (March and Olsen, 1998). In addition, both countries have specific offices which deal with minority issues, including the Ombudsmen, which were also visited and interviewed.

The staff in the two countries' representative missions to the EU in Brussels was also interviewed. The role of these individuals as transmission belts between the national capital and the European Commission was at times crucial for the understanding of the political conditionality issues. Moreover, the Brussels based diplomats commonly establish the closest contacts with the European Commission staff, thereby developing their unique perspective on EU conditionality. On the other hand, most of these individuals usually have previous experience working at the national level, providing them with a distanced, arguably more objective insight into the developments at the national level. In line with this discussion, empirical studies of Europeanisation of the previous enlargement have commonly highlighted the significance of the "national officials who operate on both European and national levels acting as change agents between the two" (Pomorska, 2007 p.28).

The focus on the EU staff and the national civil servants is a result of the important role these individuals play in both crafting the political conditionality at the EU level as well as the national response to EU conditionality. Likewise, Grabbe (2001) in her research argues that "within the executive, officials rather than politicians have had the longest and most consistent role in EU preparations, not least because of the rapid changes of government and the high turnover of political appointments" (p.1017). Thus, although several appointed officials were interviewed as well, the focus of this research remained on the more permanent staff both at the EU and national level. This approach was due to the specificities of the EU accession process and the need for the interviewee's close familiarity with the wide subject matter of this study.

At the same time, it must be kept in mind that the target groups of this study also not monolithic (See Rechel, 2009a). In this sense, differences within the

Commission on conditionality have implications over the possibility of stipulating clear benchmarks for fulfilment. Academic research has recognized the Commission is a fragmented organisation primarily in relation to different DGs (Nugent, 1997, Morth, 2000). In this vein, it has been concluded that the “working practices and structures of individual DGs suggest that they too may be considered as institutions in their own right” (Cini, 1996 p.222). Having in mind the lack of standards in the minority policies, the lack of consensus between and within various DGs carries importance for the success and study of conditionality. These differences between the actors within the Commission on this issue amplify the problem of lack of standards and diminish the potential for enforcing consistent conditionality. On a similar note, within the CoE there are differences between the Parliamentary Assembly and the Advisory Committee for monitoring of the implementation of the FCNM (See Letschert, 2005).²² Lastly, as pointed in my interviews, discordance has been noted between the views of the OSCE offices on the ground in the respective countries and the OSCE HCNM which monitors the position of minorities.²³ Moreover, the same argument also applies to the national level where the implementation of minority conditionality depends on the respective government institution. Similarly as the DGs within the Commission these organisations do not always have the same understanding of conditionality or have the same agendas.

In addition to the ‘official’ understanding of EU conditionality by European Commission and national civil servants, the field visits included interviews with representatives of CSOs both at the EU and the national level. Literature has underlined the role of non-state actors for understanding the accommodation of minority demands (Risse-Kappen, 1999). CSO representatives in many cases provide a more nuanced understanding of the EU conditionality than the official national or the EU source. Interviews with a wide set of CSO representatives are also necessary because “policy-makers tend to exaggerate the extent of EU influence for political purposes” (Grabbe, 2003 p.310). The data from the interviews with civil society representatives is used as a ‘counterweight’ to the official documents and official story of the accession process. In this manner, the

²² Author’s interview with official of the Ministry of Foreign Affairs, Skopje, March 2011.

²³ Author’s interview with OSCE representative, Skopje, February 2011; Author’s interview with official of the Ministry of Foreign Affairs, Skopje, March 2011.

study utilises information from a variety of stakeholders involved in the devising and implementation of EU conditionality.

The need to deal with several interviewee target groups is a result of the diversity of actors involved in the national minority policies and the need to obtain a diverse set of opinions on the research questions. Since both political conditionality and national minority policies in the context of the EU accession process are subject to different understandings, the variety of opinions from the target groups contributes to the improved understanding of both these issues. In this direction, the use of interviews has been advocated in cases when we are not sure what rule is guiding the actors and when we do not know their definition of situations (Dexter, 2006 p.28). Similarly, Kvale (1996) argues that “the strength of the interview conversation is to capture the multitude of subjects’ views of a theme and to picture a manifold and controversial human world” (p.7).

In light of the groups of interviewees, this research is constructed as an elite study; as it concentrates on EU and government officials and representatives of civil society. The need to focus on these groups is the result of both the nature of the transformation in this region as well as the top down nature of the accession process. Literature has been largely at agreement that the new transitional countries “were born as elite democracies because the construction of the new democratic order and its institutions began from above” (Agh, 1996 p.54). Similarly, it has been commonly argued that conditionality is most likely to influence elite behaviour patterns (Pridham, 2005 p.14). While recognizing the limitations of elite studies, the study adopts a view of elites as “experts which can provide high quality information and guidance” which is of primary concern to this research since the policies studied in the thesis depends largely on elites (Moyser and Wagstaffe, 1987 p.16-17).

With the exception of three interviews, all of them were recorded and followed a semi-structured questionnaire adapted to the specific target group of interviewees. The interviews were conducted in the language the interviewee felt most comfortable with (English, Croatian or and Macedonian). I personally transcribed and translated all interviews in English, in order to avoid interference by an external translator. According to Temple and Young (2004) “the researcher/translator role offers the researcher significant opportunities for close attention to cross cultural meanings and interpretations and potentially brings the researcher up close to the problems of meaning equivalence within the research

process" (p.168). Hence, my familiarity with the context eliminates the possibility of major misunderstandings of the regional politics and processes.

The semi-structured interview as a method was considered appropriate for tackling the research questions of this study, because it "provides access to the context of people's behaviour and thereby provides a way for researchers to understand the meaning of that behaviour" (Seidman, 1991 p.4). Thus, the interviews conducted were used in several ways in the dissertation. First, they were used for cross-checking and validating data obtained through the document analysis (see below). As the thesis analyses the understandings of EU conditionality of EU and national elites, the interviews provide information to supplement the document analysis. In this direction, "one of the strongest advantages of elite interviews is that researchers can interview first-hand participants of the processes they are investigating and obtain accounts from direct witnesses to the events in question" (Tansey, 2007 p.767). Moreover, it has been argued that the qualitative interviewing should be applied in research of abstract and complex issues, in cases where the researcher seeks to maximize response validity and where interviewees are elites which tend to prefer open-ended questions (Aberbach and Rockman, 2002 p.674). Lastly, "interviews may also help in the process of identifying which documents have been deemed to be important, read and acted upon" (Harrison and Deicke, 2001 p.94).

At the same time, the interview and the sampling method used in this study carry their disadvantages foremost in terms of representativeness and reliability. In relation to the first, attempts were made to include the main stakeholders in the policy area both from the EU, national level and civil society. However, the aim of this research was "to draw a sample that includes the most important political players who have participated in the political events being studied" (Tansey, 2007 p.765). For this purpose, a list was drawn up to ensure the inclusion of groups which can be expected to have different views on the interview questions. In addition, the representativeness of the sample was discussed with the interviewees in order to ensure the inclusion of the main stakeholders. In terms of reliability, "while information may be inaccurate for very genuine reasons (memory lapse), interviewees may also be unreliable for ulterior reasons" (Harrison and Deicke, 2001 p.95). In light of this possibility, the researcher in qualitative research needs to detect distortion by comparing data with other informants (Dexter, 2006 p.106). For this purpose, the thesis interview data was triangulated with the documents such as the EU, national and civil

society reports. Lastly, the findings are also compared with primary sources like newspaper articles and public statements by EU and national officials and linked with the available research on the case studies.

2.1.2 Archival research of EU and national documents

The fieldwork and the interviews as methods of collecting data were accompanied by archival research of both formal and unofficial EU and national documents.²⁴ According to May (1997), “documents [...] can tell us a great deal about the way in which events were constructed at the time, the reasons employed, as well as providing materials upon which to base further research investigations” (p.157). Official EU documents and reports were used as a starting point of this research in order to analyse what were the conditions stipulated by the EU. Such documents include documents from the institutions of the EU, primarily the European Commission and the Council of the EU. From the Council’s documents, the study utilises the Decisions on the Accession Partnerships, as the only formal documents adopted by the Council of the EU and published in the Official Journal of the EU, representing highest form of conditionality imposed by the EU upon the candidate countries.

On the European Commission’s side, the thesis looks extensively into the regular Commission Progress Reports as the yearly assessment of a particular country. “These documents are the only official and transparent public statements of the Commission’s assessments of the progress of the candidate countries over time” (Hughes et al., 2005 p.85). The research examines the Commission’s understanding and assessment of minority policies under the heading of Minority Rights and protection of minorities in the political criteria section as well as the chapter 23: Judiciary and Fundamental Rights, after its introduction in 2005. The Progress Reports provided in detail monitoring of various conditions and “provided the basis for enlargement decisions by other EU executive institutions” (Pridham, 2007 p.453). The importance of the Progress Reports as an essential reference source of conditionality was confirmed to me during my interviews, both at the EU and national level. For Croatia, the study also uses the Screening Reports as well as the Reports on the fulfilment of the accession negotiations benchmarks prepared in the course of the negotiations. Furthermore, the study relies on unofficial documents published for guidance in

²⁴ See provided overview of documents below.

the accession process, which in many cases are much more detailed than the official progress reports. These include the reports published by the experts of SIGMA-OECD²⁵ on the accession process, which deal with the preparedness of the countries for the accession negotiations (For more information see Hughes et al., 2005 p.74). Although unofficial, the SIGMA reports represent the basis for the preparation of the Progress Reports, especially in the areas covered by this study.

Since minority rights as a specific policy area are not directly regulated by EU law, when relevant, the research utilises the reports and opinions of the international organisations such as the CoE, the OSCE and the OSCE HCNM. Most of these reports and documents contain an assessment of the minority protection situation over a long period and are therefore very useful for setting the context and its analysis over time. Among these external documents, the Reports of the Advisory Committee on the implementation of the FCNM are of increasing importance. This Convention “by virtue of its binding character is considered as a breakthrough in minority protection” (Liebich, 2002, 125). Consequently, its ratification was extensively used by the EU as a reference point in the previous enlargement. Furthermore, both countries are signatories to the Convention and prepare regular reports, thereby providing sufficient information for analysis. My interlocutors singled out the reporting documents for the FCNM as a reference point for the development of minority policies, which were commonly used in the EU assessments as well. The objective of the research is not to untangle the influence of these different organisations, but rather examine how the EU has used the reports of these organisations in its conditionality, with a specific focus on the FCNM for the purposes of studying the consistency of conditionality.

At the national level, the study extensively relies on strategic documents for EU integration, such as the National Plans for the implementation of the Stabilisation and Association Agreement (SAA), the Action Plans for the Accession Partnerships and the NPAAAs. In addition, when available, the research uses the national contributions to the Progress Reports, which the countries prepare on a yearly basis in advance to the regular Progress Reports prepared by the European Commission. These national reports contain formal information on the measures implemented in the previous year in all areas related to the accession process, including national minority rights. Since the majority of these documents are

²⁵ Sigma is a joint initiative of the European Union (EU) and the Organisation for Economic Co-operation and Development (OECD), principally financed by the EU. www.sigmaweb.org.

updated on a yearly basis, they provide a continuous insight into the formal response to conditionality and also allow for the possibility to track the developments over time. The national documents and information from the candidate countries were analysed in their original form and language and checked against the English translations cited, contributing to the originality of the study and eliminating major misunderstandings.

Besides government documents, the study also utilises CSOs documents prepared in the context of EU accession. In accession countries, CSOs are monitoring development of minority policies and the EU accession process and prepare reports and briefs on the progress, which are used in the study. Civil society documents regularly provide a critical reflection upon the formal government response contained in the official documents, thereby creating a more nuanced view of the context. Furthermore, most of the CSOs interviewed for this thesis were regularly invited by the European Commission to submit contributions in the preparations of the Progress Reports and are therefore actors both in the devising and monitoring of EU conditionality. In addition, as was underlined by my interlocutors, when CSOs in these countries can't influence the national government for certain policies they express their concerns to the European Commission, which in many cases takes them on board and sets them as conditions in the domestic context.²⁶ Hence, "it is increasingly acknowledged that NGOs play an important role in pressing states to act in conformity with minority rights provisions" (Letschert, 2005 p.405). Lastly, the CSOs also provide shadow reports for the fulfilment of the FCNM, thereby providing information on the implementation of specific legislative provisions.

Even though the study relies on a variety of documents from all the EU and national institutions, including international organisations and CSOs, it still recognizes the executive bias of the negotiations and accession process in general. Research has "highlighted an 'executive bias' inherent in the whole accession process, because of the structure of negotiations and the fact that EU actors mostly saw the process of adopting EU norms as an administrative exercise" (Grabbe, 2006 p.207-208). The focus on the executive has further been criticised from the perspective that it poses obstacles to the democratic consolidation in the conditions of post-communism. In order to partly overcome this criticism, the interlocutors for this study have included members of

²⁶ Author's interview with CSO representative, Skopje, 18 January 2011.

Parliament (MPs), as well as CSO representatives. Still, the majority of the interviewees have either a link with or belong to the executive, because of their competence and direct involvement in the EU accession process.

The problems encountered in the data collection were primarily linked to the availability of some of the identified interviewees, which were in most cases overcome. When the interviewee was not available most-likely substitutes were identified and contacted. In Croatia, the fieldwork took place during the negotiations for chapter 23 on judiciary and fundamental rights incorporating many of the issues under discussion in this thesis. Hence, some of the interviewees were at times wary of discussing some of the issues openly and felt “obliged” to portray a positive image of the EU. Lastly, accessing official negotiating documents useful for the thesis was at times difficult due to sensitivity of these issues in the accession negotiations in Croatia. These were nevertheless made public after the conclusion of the negotiations in June 2011 and therefore are used in the thesis.

2.1.3 Role of the researcher

As a former practitioner dealing with the EU integration of the Balkans, I hold skills and knowledge which have affected the methodology of this research, both through facilitated access, but also through shaping partly my personal role as a researcher. This experience was my personal long-term participant observation of the formal institutions dealing with EU accession at the national level. During this engagement I participated directly in drafting strategic documents and in the policy making processes for the fulfilment of the political criteria for EU accession. I was also in close contact with the national institutions responsible for the fulfilment of the political criteria for accession and the European Commission staff as a main interlocutor at the EU level. Kernaghan (2009) in this direction points that, “conceptualizing the public servant as a theorist involved in research through reflection-on-action highlights the importance of the scholarly practitioner as a source of learning” (p.503).

My familiarity with the context and the formal and informal procedures of the EU accession process assisted me in the research in several interconnected ways. First, I was able to obtain access to most of the interviewees the study targets. Obtaining access to interviewees, especially in studies involving elites is a common problem, which was minimised in this research. Having established contacts with several main interlocutors in Croatia and Macedonia was helpful

both in the early phases of the research, but also in the snowballing process. Second, in some of the interviews it was easier to establish rapport and trust with the interviewees. Moreover, research has shown interviewers tend to be more successful in cases when they possess intimate knowledge about the situation of the interviewees (Burnham et al., 2008 p.124). In this direction, authors have argued that the use of language and specific terms is important in the creation of a 'sharedness of meanings' in which both interviewer and the respondent understand the contextual nature of specific references (Fontana and Frey, 2003 p.86). This "sharedness of meanings" is of increasing importance because EU officials have been commonly accused of developing their own specific terminology, which is not easily understandable by outsiders to the process. Third, I was familiar with the main documents in the policy area and was also able to obtain a variety of informal documents which assisted in the context setting and analysis.

However, I do not consider this position as fully unproblematic, because an insider to the field of study can give or accept certain meanings as a given. Studies commonly warn against the risk that the interviewer will think they know what the participant means and impose assumptions on the data without checking them out with participants (Darlington and Scott, 2002 p.55). I have as far as possible attempted to avoid the risks of insider research, when the rapport between the researcher and the interview is taken for granted. Having in mind my previous personal engagement with the topic under examination, during my research I was reflecting on my own role as a researcher. Still, as Darlington and Scott (2002) indicate, "the qualitative researcher is inextricably immersed in the research; thus qualitative research requires a high level of 'reflexivity' or self-reflection about one's part in the phenomenon under study" (p.18).

2.2 Data analysis

For the analysis, this thesis applies a combination of comparative case study method and process tracing. This combination of comparative method and process tracing was used in the previous work on the Eastern enlargement dealing with the study of EU conditionality. The basic approach of this dissertation is qualitative because "it seeks to understand the experiences and practices of key informants and locate them firmly in context" (Devine, 2002 p.197). In light of the research question and the need for in-depth analysis of both cases, this thesis is based on case oriented research as it seeks to understand complex units (Della

Porta, 2008). The case study method “attempts to locate its findings in particular historical and cultural milieu” and “can look directly at the sequence of events that produced an outcome, rather than just the outcome” (Peters, 1998 p.141). Similarly, the comparative method is adopted for this study due to “its capacity [...] (for) an in-depth understanding of historical processes and individual motivations” (Della Porta, 2008 p.202).

According to Vennesson (2008) “process tracing based on intensive, open-ended interviewing, participant observation and document analysis helps to understand the meaning and role of established regularities, and can help to suggest ways to uncover previously unknown relations between factors” (p.234). Through this method, the EU and national documents are examined in a chronological manner in order to analyse the development of EU conditionality and its interactions with domestic policies. Having in mind the sequential relationship between the various reports, they’re suitable for process tracing.²⁷ The data collected through archive and field work are analysed at three levels. First, the research examines the devising of the EU priority through the formal European Commission documents and interviews with Commission officials in Brussels. Second, the study looks at the domestic response of the national governments to the EU conditionality through the national strategic documents, adoption of legislation and policies and their implementation. Lastly, the interview data from the national level provide insight into the local understanding of conditionality. The reports on the FCNM and the Opinions from the Advisory Committee are analysed in relation to their specific time of publication and their relationship with the priorities in the EU documents. Overall, the thesis engages in the study of the “document dialogue” between the EU and the national level and triangulates these findings with the interview data. The objective of this approach was to recreate as closely as possible the intricacies and the flow of information in the process of EU accession.

The interviews conducted for this study provide information which assisted me in setting the context, but also for examining the understanding of conditionality among these elites. In terms of the latter aspect, the interviewees’ understandings of conditionality are an equally important element for analysis due to their role in the on-the-ground implementation of conditionality. The interviewees for this thesis can largely be attributed to three big groups: EU

²⁷ For an overview of all documents, see table below.

representatives, national officials and external actors (including CSOs, international organisations, think-tanks etc.). The understandings of all these three groups are extremely important for the analysis of conditionality because they represent different *perspectives* in the accession process. While the EU representatives are the authors of the conditions and their monitors, the national officials are responsible for delivering on these conditions. Hence, the shared understanding between and within these groups of the conditions is essential for the study of the consistency and implementation of conditionality. The last group are the external actors that are consulted by the European Commission in the preparation of their progress reports and assessments and are therefore a constitutive element of the process of conditionality.

Adopting this approach, the thesis supports views that a “consensus on norms and rules and their transmission” should be at the centre of a meaningful definition of conditionality (Sasse, 2005 p.4). Consensus is understood solely as a common understanding of the conditions that need to be fulfilled between the European Commission and the national level for the purposes of studying the consistency of conditionality, as well as the role of FCNM and national legislation as structuring elements of the thesis. Hence, the thesis does not deal with conceptual issues around building norm consensus and questions of legitimacy (See Payne, 2001). At the same time, literature has argued that in the thin areas of the *acquis* the formal conditionality is reduced, which strengthens the informal conditionality, providing the Commission with greater scope for ambiguity in its policy recommendations (Hughes et al., 2004 p.527). In such circumstances the ambiguity in the recommendations increases the potential for disagreements between the stakeholders and weak consistency of conditionality.

The interview data is also used to assess the role of conditionality and not to ‘overemphasize’ its role at the national level, which has been a common weakness of studies of EU conditionality and Europeanisation. According to Grabbe (2006), “it is easy to over-stress the role of the EU when we are looking for it as a specific variable” (p.48). Policy research has argued that “whether an issue would be brought onto, or dropped from, a government’s agenda largely depends on its assessment in the EU Report” (Bokulić and Kostadinova, 2008 p.31). This research questions these assessments and attempts to study whether the Progress Reports “in this region write history”, as has been argued by some of

my interlocutors.²⁸ Recognising the formal importance of these documents, the objective of the presented analysis is to examine whether we can trace policy change and link it to the EU conditions.

2.3 Periodisation of research

Case-oriented studies which are largely context-bound give importance to the use of time in the analysis. Periodisation of the research is from this perspective of increasing importance. The analysis in this thesis considers 2005 as a breaking point and therefore is divided in the period 1997-2005 and post-2005 period. The 1997 Regional Approach laid the foundations of the relationship between the EU and the region as the beginning of the conditionality towards these countries as a group. In 2001, this instrument was upgraded through the SAP, which legally still represents the basis of the formal contractual relations between the region and the EU. In this period, Macedonia and Croatia prepared their action plans for accession and also adopted most of the relevant legislation for setting the frameworks for minority policy. In 2005 the European Commission for the first time started preparing the Progress Reports on all the countries in the Western Balkans. Similarly in 2004/2005 extensive Opinions on the applications of membership of both countries were prepared by the European Commission, whereas in the post-2005 period the primary mode of monitoring was through the Progress Reports. The last reports analysed in the thesis were issued in 2012, although the thesis also reflects on some recent major developments of 2013 as well.

Overall, the analysis is divided chronologically in two chapters dealing separately with the period between 1997 and 2005, as well as the post-2005 developments, in line with the temporal dividing logic of George and Bennett (2005). 2004, as the year of the Eastern enlargement has been identified in the literature as a breaking point in which conditionality changed began changing its shape in a way that “one cannot speak of a simple evolution” (Pridham, 2007 p.454). Koinova has studied Macedonia and EU conditionality with a before and after approach in relation to 2001, as the year of the OFA (Koinova, 2011). As this research is shaped in accordance with the EU’s approach to enlargement and the applications for membership and the formal status of a candidate, 2005 is the breaking point between the two empirical chapters. Besides the two chapters

²⁸ The role of the Progress Reports as *writing history* was commonly highlighted during the interviews.

dealing with minority policies overall, to illustrate in detail the functioning of conditionality, the last empirical chapter deals in detail with a novel minority policy, employment of minorities in the administration in both cases. With this structure, the thesis both engages with the macro and micro (policy) dimension of the conditionality mechanism. Below is an overview of the documents studied and their timeline:

Overview and timing of formal document exchange between the EU and national authorities in the accession process:²⁹

	Month	Document	Issuing organisation	Frequency
1997-2000	October	Commission Services Report on the Regional Approach	European Commission	Annually, except in 1998 (two reports were published in May and October).
	September 1999	First Croatian Action Plan for EU integration	Government of the Republic of Croatia	Once
	April	Stabilisation and Association Report	European Commission	Annually
	Usually in June	Action Plan on the SAA report	National government	Annually
	Usually in January	Report on fulfilment of the Action Plan	National government	Annually (although not prepared every year)
	Depends on application	Opinion on the application for membership and analytical report	European Commission	Once
2001-2005	In this period the first Report and Opinion on the implementation of the CoE FCNM on Croatia were issued in March/April 2001 The first Report and Opinion on the implementation of CoE FCNM on Macedonia were issued 2003 and 2004.			

²⁹ A detailed chronology of the accession process of both Croatia and Macedonia is provided in the Appendix.

Post- 2005 (general timetable)	October/November	Progress Report	European Commission	Annually since 2005
	October/November	Draft Accession Partnership	European Council	2-3 years
	January – March	National Plan for the adoption of the <i>acquis</i>	National Government	Annually since 2005
	March – May	Peer Mission for justice, freedom and security	European Commission	Every two-three years
	May	SIGMA mission	Experts from the EU	Every year since 2006
	June	EP Progress Report	European Parliament rapporteurs	Annually
	June	Progress Report on realised activities	National Government	Annually
	September	Addendum to the Progress Report on realised activities	National Government	Annually
	October/November	Progress Report	European Commission	Annually
	In this period two Reports and Opinions of the Advisory Committee on the implementation of the CoE FCNM and Macedonia were published in 2006 and in 2010.			

Post- 2005 (Croatian accession)	June 2007	Screening report chapter 23	European Commission	Once
	February 2010	Negotiating position	Government of the Republic of Croatia	Once
	March 2011	Interim Report on chapter 23	European Commission	Once
	April 2011	First Report meeting the closing	Government of the	Once

		benchmarks in chapter 23	Republic of Croatia	
	May 2011	Report on meeting the benchmarks in chapter 23	Government of the Republic of Croatia	Once
	June 2011	EU Common position on chapter 23 (closing of negotiations)	Intergovernmental conference	Once

2.4 Methodological limitations and conclusions

By adopting the specific methodological approach elaborated above, this thesis carries the common weaknesses of qualitative case study comparisons and process tracing research. Primarily, by comparing similar systems this research “cannot go beyond so-called middle range theories that apply only in a restricted area” (Della Porta, 2008, 214). Furthermore, by choosing cases that share the same historical background and are subject to a specific regional process – EU accession, the thesis limits its findings to multi-ethnic countries with an EU membership perspective. On the other hand, Landman (2003) argues that “researchers working in area studies are essentially employing most similar systems design, and the focus on countries from these regions effectively controls for those features that are common to them while looking for those features that are not” (p.29). The findings of the research are nevertheless relevant for the rest of the countries in the Western Balkans which are in the accession pipeline, i.e. countries holding a membership perspective. In addition, as will be shown in the empirical analysis and conclusions, the thesis’ findings carry theoretical significance for the study of EU conditionality and its relationship with democratic consolidation.

Any study of conditionality in the context of EU accession, carries the risk of overstating the role of the EU. This study makes an attempt to overcome this risk by extensively using national stakeholders’ views and addressing specifically the role of domestic actors. Reliance on primary information from all the stakeholders also assists in the distinguishing between the roles of different actors, as one of the common critiques of process tracing. Similarly, it has been argued that “process tracing can only work if a sufficiently high level of accuracy, and reliability, can be reached on specific processes and events” (Vennesson,

2008 p.237, see also Collier, 2011). For this purpose in the analysis, the data is triangulated between the document analysis, the interviews and where possible secondary research. Even in this case, the possibility remains that “negative evidence might be ignored” and the researcher overlooks contradictory data (Vennesson, 2008 p.238). In an attempt to overcome this criticism, this thesis conducts in-depth analysis and understands conditionality only as one of the potential explanations and factors in the processes studied. By analysing the operation of conditionality over a longer period of time, it also aims to uncover other explanations which might have fed into the policy processes.

An additional line of thought of academic literature argues for the incompatibility between case studies, process-tracing and interpretative approaches. George and Bennett (2005) in their seminal work on case studies argue that “the strongest means of drawing inferences from case studies is the use of a combination of within-case analysis and cross-case comparisons within a single study”, but limit the use of the term “case study” to a positivist context (p.18). Checkel similarly highlights that the process tracing method is “fundamentally at odds with more interpretative epistemologies” (Checkel, 2005). On the other hand, more recent methodological studies using examples from trends in current research have supported the use of process tracing in interpretative research. Vennesson (2008) in this direction highlights that “process tracing can be used to assess the relative impact of certain variables, but also to get a better sense of the actors’ perceptions” (p.235). Having in mind this is a case-oriented, rather than variable oriented research, this observation is of increasing importance, because process tracing has enabled me as a researcher to grasp the evolution of conditionality and its understanding at the EU and national level. Hence, as this has been a widely used method in latest research and also due to the suitability of the processes under examination for a chronological analysis (illustrated in the tables above) this research has opted out for the use of case-study approach and process tracing method.

On a more general level, the use of identity as a basis of categorisation of analysis has been criticized as a potential way of reification of these concepts (Brubaker and Cooper, 2000, 5). Identity for the purposes of this study is understood in line with Tilly’s (2003) definition of “a potent set of social arrangements in which people construct shared stories about who they are, how they are connected, and what has happened to them” (p.608). Brubaker and Cooper (2000) argue that “researchers should avoid unintentionally *reproducing*

or *reinforcing* such reification by uncritically adopting categories of practice as categories of action” (p.5). Approaching the practicalities of minority policies in light of the EU accession, this research cannot avoid the use of this terminology. In fact, the discourse in the EU accession process on minority rights has largely been framed in group identification (Hughes and Sasse, 2003 p.8). By doing so, however, it does not imply that there are no intra-group differences within the analysed cases. At the same time it recognizes that “ethnic groups should not be understood as natural units that have always been there [...] since, conceptually and empirically, it makes more sense to understand them as the result of social and political processes of categorization” (Vermeersch, 2006 p.3-4) .

The use of document analysis and elite interviews as methods raise several concerns in relation to the data that were obtained for the purposes of this study. Reliance on official documents in many cases can provide a general idea of the policy direction, but only in its formal aspect. The documents for this purpose will be treated in relation to the political context in which they were developed, rather than as direct indicators of policy directions. The documents were assessed according to the criteria of authenticity, credibility, representativeness and meaning (Harrison, 2001).

The semi-structured interview as a method also raises several important concerns in terms of the data they provide and their subsequent analysis. First, conducting interviews is costly both in terms of financial resources and time. Nevertheless, as I was spending part of my research period in my home country and have obtained the minimal resources for conducting them, I was able to overcome these difficulties. In terms of time, as I had initial contacts with the interviewees, I was able to arrange and conduct the interviews fairly quickly. Similarly, access to the interviewees is always a major concern in research involving elites (See Dexter, 2006). Having already established contacts with parts of my target groups, including the civil servants and the CSO representatives I was able to partly overcome this problem. As my research focuses on the European Commission staff and civil servants, they are a group that is usually more willing to devote time to researchers than politicians and appointed officials.

As this thesis examines a period which includes events over almost 15 years, when using interview data, some of the chapters (especially the chapter on the period between 1997 and 2005) run the risk of reliability of oral history. Thus, it acknowledges that the possibility remains “the interviewer to invent a narrative out of his own interest; or the interviewee may wish to please the interviewer

knowing how to frame answers in his language and discourse” (Boobbyer, 2000 p.557). In the interviewing context, the interviewee may select and organize certain incidents and communicate them in a particular way. However, even false information can be useful in relation to how a person chooses to explain an event (Boobbyer, 2000 p.557). Attempts to overcome these problems were made by interviewing a large sample of stakeholders relevant for the study and by triangulating of data from interviews with several target groups and extensive secondary literature and official documents.

Lastly, qualitative studies relying on open-ended interviews carry specific ethical concerns which were taken into consideration when creating and conducting this research. When contacted for the purposes of the interview, potential interlocutors were provided with an information sheet with basic info on the proposed research project and its funding. Informed consent was obtained from all the interviewees in accordance with the University’s rules and regulations and was securely stored.³⁰ Confidentiality of the interviewees was ensured primarily due to their public position. Literature highlights that it is the researcher’s responsibility to reflect on the possible consequences not only for the persons taking part in the study, but for the larger group they represent as well (Kvale, 1996 p.116). Hence, the interviewees that took part in the study in the thesis are identified according to their position and or institution/organisation since these factors are of relevance for this study. In the Annex IV of the thesis the interviewees are provided with their names and positions, however for the text of the thesis I consider their positions to be of primary relevance. Moreover, in order to ensure confidentiality, the data is presented in a disaggregated way, i.e. in relation to the themes in order to reduce the possibility of recognition of the interviewees (see Darlington and Scott, 2002).

This chapter has presented the methodological approach of this study. It has reflected on the process of data collection and data analysis for this thesis which aims to examine the application of EU conditionality in relation to minority policies in Croatia and Macedonia between 1997 and 2012. The next chapter examines how the research fits in theoretical debates on Europeanisation by conditionality and democratic consolidation in order to substantiate the focus of this thesis on the role of the EU in shaping national minority policies.

³⁰ This research project was approved by the University of Leeds Faculty Research Ethics Committee on 25th June 2010.

3. Europeanisation by conditionality in national minority policies – framework for analysis

3.1 Introduction

As a study of the role of the EU in shaping national minority policies, this dissertation draws on theoretical and empirical findings of literature on how the EU influences domestic political developments. Due to the countries it studies, it relies on insight of the literature on the shaping of national minorities through the processes of Europeanisation by conditionality and post-communist democratisation. In academic (and policy) research all of these conceptual frameworks are subject to extensive contestations and debates. This chapter therefore aims to clarify conceptually how these terms and frameworks are used and applied in this dissertation. For this purpose, it first examines Europeanisation as the most common framework for studying the impact of the EU on member states and candidate countries. Looking into the variety of theoretical understandings of this phenomenon, the chapter singles out the instrument of conditionality as a defining feature of the Europeanisation of candidate countries. The second section of the chapter examines two approaches for the study of conditionality, through rational institutionalism and by studying conditionality as a process over time. It focuses on the understanding of political conditionality, specifically in relation to national minority policies. In light of the research questions posed in the introduction it adopts a process-based understanding of conditionality and justifies its use in the thesis. The following two sections examine the relationship between Europeanisation by conditionality and the processes of democratic consolidation. Section three examines the processes of democratisation and democratic consolidation and the role of national minorities in them. On the basis of the presented understandings of Europeanisation by conditionality and democratic consolidation, the fourth section reflects on the dynamic nature between these processes. Lastly, the chapter reflects shortly on the limitations of the study and presents its conclusions as a basis for the empirical chapters that follow.

3.2 Europeanisation of member and candidate countries

The role of the EU in shaping national policies has been studied commonly within the framework of Europeanisation. Although a common concept in the studies of the EU, Europeanisation has been subject to numerous redefinitions and debates. Its origins are linked to the domestic adaptations brought about by

EU membership in the EU member states. One of the earliest definitions of Europeanisation grasps it as a process in which the “EC [European Community] political and economic dynamics become part of the organisational logic of national politics and policy making” (Ladrech, 1994 p.69). Whereas originally studies of Europeanisation focused on the top-down pressures from the EU, subsequent research has incorporated its bottom-up approach through the focus on the member states’ influence on the policy making process in Brussels. Börzel (2002) in a study of environmental policy developed the bottom-up and top-down dimension of Europeanisation “by focusing on the ways in which Member State governments both shape European policy outcomes and adapt to them” (p.193). As a result of this extension towards encompassing both top-down and bottom up effects, a shift towards broader definitions can be noted. In this vein, Radaelli (2004), understands Europeanisation as

the processes of construction, diffusion, institutionalisation of formal and informal rules, procedures, policy paradigms, styles, ‘ways of doing things’ and shared beliefs and norms which are first defined and consolidated in the making of EU decisions and then incorporated in the logic of domestic discourse, identities, political structures and public policies (p.3).

The extension of Europeanisation to various structures and policies, has led to criticisms of over-stretching. In response, literature has attempted to delineate the boundaries of Europeanisation. Radaelli (2000) has argued that the concept is not precise enough, as it is inclusive of EU policy, politics, and their repercussions on national systems. He also underlines that Europeanisation should not be mistaken for its outcomes such as convergence and divergence, or with the process of European integration (Radaelli, 2000). In contrast, for Olsen (2002) the different conceptions of Europeanisation complement, rather than exclude each other. As a result of these debates, research has largely come to an agreement that “Europeanisation in itself is not a theory, but a phenomenon which a wide range of theoretical approaches have sought to explain” (Bulmer, 2007 p.47).

Authors have commonly used a range of theoretical approaches to supplement the Europeanisation concept, most prominently through the variants of new institutionalism, ranging from rational choice institutionalism, historical and lastly, sociological institutionalism. These approaches, which commonly compete for the understanding of EU impact on both member and non-member states make new institutionalism indispensable for understanding the theorisation

of Europeanisation (Bulmer, 2007 p.51). Rational choice institutionalism has been mostly used for the analysis of both rule adoption and rule implementation. The internalisation of EU norms has been analysed through the constructivist approach of socialisation and social learning advocated by authors like Checkel (1999). Both approaches respectively use the logic of consequences and appropriateness originating in the work of March and Olsen (1998). The “consequential frame sees political order as arising from negotiation among rational actors pursuing personal preferences or interests in circumstances in which there may be gains to coordinated action” (March and Olsen, 1998 p.949). Through the logic of appropriateness, “actions are seen as rule-based [and] human actors are imagined to follow rules that associate particular identities to particular situations” (March and Olsen, 1998 p.951). Börzel and Risse (2000) have argued that the two logics, despite their analytical differences can operate at the same time, which is a position also adopted in this thesis. Similarly, Olsen (2002) has proposed that “the way ahead lies in integrating perspectives on institutional dynamics, rather than choosing among them” (p.944).

While originally developed in relation to EU member states, post-2000 the concept of Europeanisation has been extended to the analysis of the impact of the EU on the candidate countries (Schimmelfennig and Sedelmeier, 2005b, Grabbe, 2006). Sedelmeier (2006) in his overview of the Europeanisation literature in new member and candidate states argues that the Europeanisation of applicant states has been slowly established as a separate sub-field of this broader research agenda. Similarly, Grabbe (2006) underscores the need for an “analytical framework similar to that used to analyse the EU, but one that takes into account the particular characteristics that were critically different for CEE” (p.45). Héritier (2005) describes these differences in terms of their inclusion of top – down and bottom-up processes. Hence, she argues that while Europeanisation of member countries is concerned both with the top-down and bottom-up processes, the focus of the analysis in the case of candidate countries is on the former (p.207). Moreover, literature is largely in agreement on the specific conditions that have affected the specific form of Europeanisation in the candidate countries, such as the transition and democratic consolidation of these countries and the link of Europeanisation with accession negotiations (Héritier, 2005 p.203).

Morlino has ruled out Europeanisation of non-member states of the Union, though this position has not been supported by majority of literature

(Morlino quoted in Radaelli, 2000). Specifically in this context, Papadimitriou and Phinnemore (2003) have argued that the study of "the Europeanisation thesis beyond existing members can not only help us understand better the process of transformation in Eastern Europe and the ongoing accession negotiations, but can also contribute towards the refinement of the term's rather blurred conceptual content" (p.1). Having in mind the different conditions under which Europeanisation of candidate countries takes place and the dominant top-down dimension of this phenomenon in the region studied, this study understands Europeanisation as "domestic adaptation to European regional integration" (Vink and Graziano, 2007 p.7). In this way, the research supports both the potential for Europeanisation of candidate countries, underscoring the need for analysing this phenomenon hand in hand with the domestic political processes. This definition encompasses both the top-down and bottom-up Europeanising processes, which are of significance and used in the study as will be shown later in this chapter and in the empirical analysis. Lastly, this approach recognizes that Europeanisation is not limited to the EU itself (as entitled EU-isation), but also to other forms of regional integration, in this case the CoE and the OSCE as well.³¹ The focus of this thesis is nevertheless on the role of the EU because, in the case of the candidate countries, the EU has streamlined the requirements from the other international organisations in its requirements for membership. Most prominently, it has used the CoE FCNM, as the only international binding document in relation to national minorities. Thus, its use as part of EU conditionality for accession is specifically examined in this thesis.

3.3 Conditionality – a defining feature of the Europeanisation of the candidate countries

3.3.1 Political conditionality

The Europeanisation of the candidate states for EU accession has been managed primarily through the instrument of conditionality defined as "the use of positive incentives (ultimately EU membership) as rewards for states that the EU specifies" (Sedelmeier, 2006 p.9). The mechanism of conditionality was most extensively developed in the study of the Eastern enlargement of the EU, since

³¹ This has been a widely accepted approach especially in studies of accession as well as research specifically dealing with the post-Yugoslav space. See for example: SHAW, J. & ŠTIKS, I. 2010. The Europeanisation of Citizenship in Former Yugoslavia: An Introduction. CITSEE Working Paper, 2010/01, School of Law, University of Edinburgh.

prior to the 1990s there was no proper monitoring of conditions for accession to the EU, especially in relation to the political criteria (Pridham, 2007). Similarly, “conditional accession following the fulfilment of the Copenhagen criteria” has been the “main thrust of EU policy in the [Balkans] region” (Elbasani, 2009 p.5). Minority policies specifically as the policy area of interest to this study are an element of EU political conditionality, which emphasizes “respect for and the furtherance of democratic rules, procedures and values” (Pridham, 2002a p.956).

Political conditionality in its widest terms is a policy instrument which involves “the linking of development aid to demands concerning human rights and (liberal) democracy in recipient countries” (Sørensen, 1993 p.2). This wide notion of political conditionality is most commonly used in relation to development studies and although it shares some similarities with EU political conditionality, there is a substantial difference between these two instruments. The former is founded on the “threat of the reduction or ending of development assistance funds” (Uvin, 1993 p.67-68). In turn, EU political conditionality uses the carrot of membership in the Union, while the main threat is exclusion. In light of this difference, political conditionality has also been defined as a mechanism that

entails the linking, by a state or international organisation, of perceived benefits to another state (such as aid, trade concessions, cooperation agreements, or international organisation membership) to the fulfilment of conditions relating to the protection of human rights and the advancement of democratic principles (Smith, 2001 p.37).

This distinction is necessary since inferences from economic conditionality (IMF and the World Bank) to political conditionality are questionable due to the different nature of the problems they address (For a discussion see Kelley, 2004b p.430). For example, Grabbe (2006) argues that whereas in the IMF and World Bank conditionality the perceived benefits are clearly linked to the fulfilment of certain conditions, in the case of EU political conditionality “the tasks were complex and many of them were not amenable to quantitative targets that showed explicitly when they had been fulfilled” (p.32). When referring to EU conditionality, this study will use the latter definition and focus on the literature linked with the EU accession process, rather than general conditionality literature.

Whereas literature commonly uses both terms democratic and political conditionality, Anastasakis (2008) in his work on the Western Balkans supports the use of the term political conditionality instead of democratic conditionality. The objective of the use of this specific terminology is to underline the importance

of the political transformation without the unquestionable inclusion of the democratisation aspect. Anastasakis (2008) also highlights that “EU political conditionality can run counter to democratisation, at least in the short term when some of the prescriptions prioritize law and order instead of elections and/or civil society development” (p.366). Taking into account these debates and the official terminology adopted by the EU, this dissertation for the purpose of consistency accepts the term political conditionality. This term is suitable since the analysis will deal with the political criteria for EU accession and will also reflect on the impact of the political criteria on the democratic consolidation of the countries under examination.

3.3.2 Studying conditionality – the external incentives model

Despite its widespread use in literature, a consensual understanding of EU conditionality is missing in academic debates. Similarly as Europeanisation, conditionality is commonly studied with the use of rational choice institutionalism and sociological institutionalism, linked respectively with the logic of consequences and appropriateness originating in the work of March and Olsen (1998) discussed in the previous section. Rational choice studies commonly follow the logic of consequences, linked to the perceived benefits of conditionality. On the other hand, authors like O’Brennan (2006) have recognised the importance of the logic of appropriateness, stressing that “normative explanations of the enlargement prove much more compelling than either geopolitical or economic-centred arguments” (p.177). In an analysis of the relative impact of membership conditionality incentives and socialisation, Kelley (2004b) concludes that “combining both socialisation-based efforts and conditionality appears not only effective, but also wise” (p.453). This research recognizes the importance of both logics and thereby emphasizes the need for simultaneous examination of literature from both strands for the study of this mechanism and its impact.

The most common analytical tools for the examination of political conditionality have revolved around the previously examined logics of consequences and appropriateness. In line with this division, Schimmelfennig and Sedelmeier (2005b) have developed three models for the examination of the effectiveness of conditionality – the external incentives model, the social learning model and the lesson drawing model. These models were applied in two alternative contexts: democratic (political as used in this thesis) and *acquis* conditionality. For these authors, conditionality is “a bargaining strategy of

reinforcement by reward, under which the EU provides external incentives for a target government to comply with its conditions” (Schimmelfennig and Sedelmeier, 2004 p.662). The conclusions of their research indicate that rule transfer from the EU to the CEECs and the variation in its effectiveness are best explained according to the external incentives model and are linked to the high credibility of EU conditionality and the low domestic costs of rule adoption (Schimmelfennig and Sedelmeier, 2005b). Having in mind that the credibility of conditionality in the area of minority protection is low, because of the contested nature of minority protection norms and the domestic costs are usually high, the chances for success of the external incentives are low. According to this model, the minority condition should not be effective, even though in cases like Latvia and Estonia conditionality has been praised for its success in relation to the protection of minorities, going directly against the logic of the external incentives model. In light of these bleak predictions for success, Sasse (2009) has argued that the link between low domestic adoption costs and effective conditionality undermines the very notion of conditionality (p.18).

The external incentives model has been the main explanatory tool for the study of rule adoption by the candidate countries in both the eastern enlargement of the EU as well as in the seldom studies of the Western Balkans accession (Grabbe, 2005, Trauner, 2011). At the same time, its application in non-*acquis* policy areas and political conditionality especially has been subject to criticisms due to its focus on the outcome, presupposed determinacy of EU rules, focus on power politics and overestimating the role of EU conditionality (See Hughes et al., 2005, Brusis, 2005b, Grabbe, 2006). First, by focusing on rule adoption as the outcome of conditionality, the external incentives model does not provide sufficient tools to examine the process of application of conditionality which is of interest to this research. As a result, the approach does not account for the changes of conditionality over time, which are of significance for the before and after approach adopted for this thesis.

Second, in the specific policy area of interest to this research, the external incentives model is not adequate due to the presumed determinacy of the EU rules. Rational institutionalist explanations of conditionality assume an existing consensus between both sides on the content of EU rules and the benchmarks for their fulfilment. On the other hand, as already explained, conditionality in relation to minority policies conditionality is highly flexible. Grabbe (2006) points to the analytical difficulties of grasping conditionality since it has become a moving

target. This has been the case foremost in the political criteria as the EU has moved down the path of using conditionality on issues of domestic politics (Pridham, 2002b). Moreover, “the EU puts different emphasis on the way it justifies its policy of conditionality to domestic actors in the various Western Balkan countries – a differentiation closely linked to the specificity of each case” (Noutcheva, 2007). As a result, the premise of the existence of a consensual understanding on the side of both the candidate country and the EU is strongly contested in academic literature, especially in relation to political conditionality. In response, Hughes and Sasse (2003) argue that “the standard measure of compliance employed in studies of EU enlargement, the degree and pace of transposition of the *acquis de l’union*, is not useful since EU law is virtually nonexistent, in the policy area of minority protection” (p.2).

It is nevertheless necessary to qualify that the setting of criteria in the minority area is difficult primarily due to the complex nature of these policies. Pravda (2001) explains this practical problem in setting democratisation criteria and evaluating political performance, because “political targets are typically qualitative and hard to define as precisely as economic goals” (p.13). Brusis (2005b) also concludes that the conditions “are likely to have a more tangible direct impact in issue areas where the EU has a more prescriptive *acquis*” (p.316). In light of these assessments, Magen and Morlino (2009) criticize the tendency of literature towards the homogenisation of external influence on domestic reform processes (p.12). Hughes et al (2005) consider that a “fundamental problem for the concept is that macro-level and policy-level studies are inconclusive about the causal effects of ‘Europeanisation’ and demonstrate the persistence of deep structural divergences across national and policy contexts” (p.28). Magen and Morlino (2009) also underline that in reality, the same factors have a varying effect on democratisation outcomes, in light of the specific outcome studied.

Moreover, it has been further argued that “if the conditionality criteria pertain to an issue area perceived as problematic for national identity, a different line of reasoning will be triggered than in cases where the criteria are considered unproblematic” (Freyburg and Richter, 2010 p.266). National minority issues are from this perspective of highest salience for the national identity. For Freyburg and Richter (2010) national identity determines the logic of social action that governments will follow when responding to the Union’s conditionality criteria (p.266). Thus, in these policy areas, the findings on the effectiveness on the external incentives model are qualified by emphasizing the context-dependent

influence of the EU as an actor (Schimmelfennig and Sedelmeier, 2005a p.223). Overall, as a result of these difficulties in framing the EU's impact in relation to minority protection in an external incentives model, research has recommended its use predominantly in relation to prescriptive *acquis* policies.

Rationalist explanations of conditionality have also been under criticism due to their focus on power politics, which is not always adequate for grasping the nature of conditionality. To illustrate this point, Grabbe (2006) examines the restrictions of the free movement of people in the 2004 and 2007 accession, concluding that "the candidates did not just respond to the material incentives provided by the EU's exercise of power" (p.202). Hence, if rational choice explains the nature and behaviour of national governments, governments in many cases do not respond to EU conditionality in terms of their most favourable choices. Grabbe (2006) goes on to argue that "for the CEE candidates, the puzzle lies in their continued implementation of EU policies despite the imposition of a transition period and despite high levels of uncertainty" (p.3). She explains this phenomenon through the locking in the process of "Europeanisation which had a momentum and logic independently of the negotiations" (Grabbe, 2006 p.3).

Lastly, the external incentives model has been under criticism because of the risk of overestimating the effects of the EU conditionality. As explained in the introduction, the simultaneity of the processes of Europeanisation and democratisation makes it increasingly difficult to account for the developments linked to each of them separately. Moreover, as the EU appeared as an actor in the CEE countries at a point when early transition choices had already been made, there is no possibility to study the effectiveness in absence of alternative setting without the EU as an actor. As a result, demonstrating causal links between the externally induced conditions and the domestic policy choice has been increasingly difficult. The external incentives model, according to Brusis (2005b) "does not allow the interference that the domestic change is driven by EU incentives because the Union applies conditionality or because domestic actors justify their decision as driven by EU conditionality" (p.297).³² As a result of these assessments, the external incentive model, although used for the study of *acquis* conditionality is not considered as an appropriate framework for this study, which is interested in the role of EU in shaping minority policies between 1997 and 2012. For this purpose, the next section, examines the alternative approach for the

³² In light of these criticisms, this dissertation tackles specifically the role of domestic actors in the operation of conditionality.

study of EU conditionality by focusing on the process of its application and evolution over time, which is used in this thesis.

3.3.3 Studying conditionality as a process

Due to the challenges in framing the analysis of national minority policies in the external incentives model, empirical studies have attempted to incorporate its flexible nature and developments over time. As mentioned in the introduction, Hughes, Sasse and Gordon (2005), have argued that EU conditionality “includes not only the formal technical requirements on candidates but also the informal pressures arising from the behaviour and perceptions of actors engaged in the political process” (p.2). Whereas the former “embodies the publicly stated preconditions [...] of the ‘Copenhagen criteria’ and the [...] *acquis*”, the latter “includes the operational pressures and recommendations applied by actors within the Commission [...] during their interactions with their CEEC counterparts” (p.26). This approach defines conditionality by the process of its application, which is essential for this thesis, as it allows for the research to study the consistency and shifts in the criteria within the specified time frame, i.e. between 1997 and 2012. The period under study in this research extends over fifteen years, since the first launching of specific forms of conditionality to the Western Balkans. Thus, it provides an analysis of the developments of conditionality in relation to the Western Balkans, but also insight into the changes from the use of this instrument in relation to Eastern enlargement.

Initially, the process based approach to conditionality was developed through the example of regional policy as a *non-acquis* policy area in the cases of the new member states prior to their accession through the work of Hughes et al. The findings from this policy area were subsequently applied to the case of the minority policies, foremost by the work of Gwendolyn Sasse on the eastern enlargement (Sasse, 2005, 2006, 2009). From this perspective, conditionality in relation to minority policies is first examined through the processes of its construction at the EU level both in the EU documents and through the stakeholders’ understandings. The second step is an analysis of its interactions in the domestic political context for the purposes of accounting for domestic actors’ interference in the application of conditionality (Sasse, 2009). As a result, the stakeholders’ understandings of conditionality become an integral element of the conditionality mechanism, as also explained in the methodology section.

The wide and process-based approach to conditionality underpins this study due to several reasons. First, this definition and approach provide for the possibility to examine the process of construction, application of conditionality and its outcome, thereby taking into consideration its changes over time. This approach according to Sasse (2009) “highlights the pitfalls of linear causality models and the need to take seriously the inherent politicisation of conditionality” over time (p.19). Hence, in line with Sasse’s (2009) arguments this study understands “the minority condition as a construct is the recognition that any notion of compliance is a construct, as well as a political judgement” (p.20). Pridham has similarly argued that we should study “conditionality contextually, since how it has developed and been handled is shown to be a dependent variable both on the EU side in terms of motivation and on the domestic side in terms of implementation” (Pridham, 2007 p.447). By approaching conditionality as a process and over time, the research will provide insight into its implementation, continuity and consistency over time, the features that have been identified as crucial for success by academic literature.

Second, a strictly formal definition of conditionality is not appropriate for this thesis because in the specific policy area of its interest, the “Copenhagen criteria do not define the benchmarks or the process by which EU conditionality could be enforced and verified” (Hughes et al., 2005 p.25). This assessment is supported by the use of national legislation and agreements as elements of EU conditionality, a conclusion of academic literature, as well as of the fieldwork of this thesis (See Brusis, 2005a). The use of national legislation in the stipulation of conditionality makes the operation of this instrument context specific and flexible. Whereas Hughes et al would emphasize the flexible nature of conditionality, Grabbe has defined this as a moving target problem, which is common to the Copenhagen criteria, all of which are “debatable and slippery concepts” (Grabbe, 2006 p.32). Moreover, with the changes of national legislation, the conditionality also shifts, thereby amplifying the moving target problem. For this purpose, the thesis specifically looks into the consistency of conditionality and how the EU has used national legislation and agreements as elements of conditionality in both case studies, including a common policy of representation in the administration.

Pridham (2005) has demonstrated the evolution of the conditions of the EU from

procedural conditions of formal democracy (rule of law, separation of institutional powers, free elections, freedom of

expression) to include criteria of substantive democracy, such as the role of political parties as a vehicle of political participation, pluralism of media, importance of local government and involved civil society (p.21) .

This tendency is amplified in the case of the minority policies and the Western Balkans, due to its multiethnic nature and legacy of conflicts. As a result it has been argued that “the EU applied differentiated pressure across applicants, dependent on whether minority protection was regarded as problematic and security relevant in the particular case” (Schwellnus, 2008 p.187). In the countries studied, in light of the flexibility of the policy area the EU exercised increasing (formal and informal) pressure on the candidate countries. These informal dimensions are grasped in this research by relying on stakeholders’ views, as elaborated in the methodology chapter.

Third, the formal and informal elements of conditionality are incorporated into the study due the multitude of roles the EU has undertaken in the post-conflict societies in the region and in the two case studies specifically. In addition to using accession conditionality, in the Balkans the EU has also been directly involved in the domestic politics of these countries, primarily through negotiating/guaranteeing peace agreements in light of the recent conflicts. The variety of roles has been analytically examined by Noutcheva et al by making a distinction between the EU as ‘an active player’ and a ‘framework’ with respect to post-conflict circumstances. In the first case, the EU is an active player involved in the mediation and conflict resolution in the region, which gears the involved parties towards conflict settlement Noutcheva et al. (2004). The traditional instruments for accession as a long-term perspective of integration in the EU represent the latter role of ‘EU as a framework’, which offers the possibility of participation in decision-making for these countries and equips them with models of governance and policy options. Similarly, Berg and van Meurs in policy terms distinguish between both active impact of the EU in relation to border policies and conflict management in contrast to its passive dimension, which concerns identities and conditionality (Berg and van Meurs, 2002 p.71). While the EU role as a framework has mainly long-term implications, its function as an active player is intended to have short term effects on the conflict (Noutcheva et al., 2004).

Fourth, as a result of the reliance of the EU on other organisations’ assessments in relation to minority policies (such as the CoE and OSCE), dealing with the EU conditionality in relation to minority policies as an independent

variable is further complicated. Sasse (2006) argues that “while the EU borrowed the link between democracy and human (and later) minority rights from the CoE, the OSCE provided the EU with the security-based rationale for minority protection” (p.65). The result of the involvement of multitude of actors involved in minority policy is an exacerbation of the problem of attribution which is in any case present in Europeanisation and conditionality research (See Rechel, 2009a). By studying conditionality over time and looking in parallel into the use of other assessments by EU in the stipulation of conditionality, the process based approaches make a first step towards overcoming the problem of attribution. The focus on the EU conditionality is nevertheless maintained due to the broad assessment that the EU has acted as a hub for all the assessments of these organisations in relation to democratic conditionality, including minority policies.³³ The role of other organisations (as well as domestic actors) is also studied through the reliance on the stakeholders’ views both at the EU and national level which are studied as an essential element of conditionality. In these circumstances, the assessment of implementation and consistency of conditionality are essential for unpacking the functioning and role of this instrument.

Hence, this research looks into how the EU has used other international instruments, foremost the FCNM in devising its own conditions, rather than looking specifically into the operation of other international organisations, such as the CoE. For this purpose, in its empirical analysis the study specifically focuses on how the European Commission has used the FCNM as the only international instrument in this policy area in its stipulation of conditionality. As mentioned in the introduction an assessment of the work and cooperation between the OSCE HCNM, the CoE and the UN Working group of minorities in Macedonia and Croatia has been performed by Letschert (2005). Focusing on EU conditionality, but also looking at the assessments of the OSCE HCNM and the CoE, the study overcomes common criticisms of conditionality studies on ethnic politics due to their focus on a single institution and the particular strategy it applied (See Kelley, 2004b).

Lastly, in addition to looking into the requirements from other international organisations, by approaching conditionality through the process of its application, this research will examine simultaneously the role of domestic actors as integral elements of this mechanism. In fact, empirical studies of soft

³³ This was confirmed to me at numerous occasions during the fieldwork in discussions with various interviewee groups.

areas of the *acquis* have emphasized the role of the domestic actors in the application and study of conditionality. Brusis (2005b) by analysing the use of EU conditionality in the regionalisation of the Czech Republic and Slovakia argues that “domestic factors were of key importance for the trajectories and outcomes of regionalisation” (p.295). As a result, this research will avoid overemphasizing the role of the EU, as one of the major criticisms of both Europeanisation and conditionality studies. This understanding is largely in line with the argument of Pridham in the study of the international dimensions of democratisation. According to him, the best way to “proceed [in research] is through focusing on interactions, and therefore two-way effects, between sets of international and domestic factors that may well straddle the conventional boundary between them” (Pridham, 2005 p.10). Adopting this position, this research will examine how the EU has used the FCNM and national legislation in its conditionality mechanism as well as the role of domestic actors.

3.4 Democratic consolidation and national minorities

Studying the role of the EU in shaping national minority policies this thesis ultimately reflects on the role of the EU democratic consolidation in the conditions of post-communism. Democratic consolidation is considered generally in literature as a constitutive element of the process of democratisation. “Democratisation as a term describes the overall process of regime change [...] from the end of the previous authoritarian regime to the stabilisation and rooting of new democracies” (Pridham and Lewis, 1996 p.2). All academic approaches tend to divide the process of democratisation into several phases. Though often subject to disagreement, the most common temporal division with respect to post-communist countries is between the processes of transition to a liberal democracy and its subsequent consolidation (Pridham and Lewis, 1996 p.2). This research operates with this division and primarily focuses in its analysis on the latter phase, i.e. democratic consolidation. In this respect, literature has stipulated that by 1997 when the EU got extensively involved with the post-communist world, the democratic transition in East-Central Europe was largely over (Pridham, 2007). At the same time, it recognizes that some ongoing concerns in relation to state-building in the Balkans would be classified by literature as relating to democratic transition as well (For a discussion see Pridham, 2007).

Although a commonly used term democratic consolidation has been understood in various ways in the academic research. Different definitions of consolidation emphasize “various processes, levels, dimensions, locations of areas of political change” (Plasser et al., 1998 p.11). Analysts like Schedler (1998) have pointed to its excessive conceptual overstretching, since the concept has come to include elements ranging from popular legitimation to the alleviation of poverty, and economic stabilisation. Alongside arguments of over-stretching, Linz and Stepan’s (1996) definition of democratic consolidation as one of the most widely used in research. For them, a consolidated democracy entails a multitude of conditions, the most important of which are: a free and lively civil society, a relatively autonomous political society, the rule of law, a usable state bureaucracy and an institutionalized economic society (p.7). However, as this study deals primarily with the management of inter-ethnic relations, a more focused definition of democratic consolidation is utilised. For the purposes of this research, consolidation requires that there is consensus of the citizens of a territory on the legitimacy of the established political unit (See Linz and Stepan, 1996). In light of this definition, the research considers inter-ethnic relations, i.e. national minority policies as a key element for the democratic consolidation in the conditions of post-communism. At the same time, literature has considered national minority policies as one of the areas in which international actors stand in the core of the democratic consolidation process (Pravda, 2001). Thus, this research accepts that any theory on the national minority question in the region needs to incorporate a “systematic discussion of the role assumed by international organisations” (Smith, 2002 p.9).

While positing inter-ethnic relations at the heart of democratic consolidation, literature has generally considered multi-ethnicity as an obstacle for democratisation. In this direction, Rustow (1970) points that belonging to a shared political community is a precondition for the transition to democracy. The experience of the post-communist world especially with the inter-ethnic conflicts that accompanied foremost the dissolution of Yugoslavia in the early 1990s largely confirmed Rustow’s expectations of difficulties in building democracy in plural societies. Vachudova and Snyder (1997) in this direction have argued that a “nationalist pattern” of political change took place in 1989 and caused the “ethnisation” of domestic politics. In light of these early post-communist developments, Linz and Stepan (1996) underlined that “the more the population of a state is composed of plurinational, lingual, and religious societies, an

agreement on the fundamentals of democracy will be more difficult” (p.29). Schöpflin (2001) explains this tendency by positing ethnicity as the sole source of coherence in the public sphere due to the virtual non-existent civil societies (p.119). In response, Linz and Stepan (1996) have concluded that diverse societies in the transition process suffer from a *stateness* problem. Overall, both the experience and the literature on post-communist transformation highlight the difficulties that diversity multi-ethnicity as an obstacle for democratisation.

Due to the above outlined difficulties for building democracy in diverse societies, academic writings have looked into possibilities for accommodating multiethnicity (usually) via institutional changes. These responses, however, depend upon the understanding of minority rights as group specific or individual rights. As a result, the academic discussions have revolved around justifying minority rights and their implications in relation to the neutrality of the state. Kymlicka (2002c) has argued that “the idea of ethnocultural neutrality is simply a myth” (p.16). He goes on to argue that group-specific rights should be granted in line with the specific context (Kymlicka, 2002b). Looking at international instruments for minority rights Thornberry (2001) concludes that “minority rights have been ‘admitted’ into the contemporary canon of human rights as rights of individuals, not as ‘collective’ or ‘group’ rights” (p.53). On the other hand, authors like Barry (2002) emphasize the primacy of fairness and equal rights for all, supporting the ethnocultural neutrality of the state.

According to Brusis, the EU does not expressly support group rights as an approach to minority protection, but does not show a clear preference for individual rights either (Brusis, 2003). The lack of a clear approach in this policy area in practice is reflected in the variety of terms that the European Commission uses in its reports, i.e. minority rights, rights of persons belonging to minorities, which are in most cases linked to the national definitions of the country in question.³⁴ Pentassuglia (2001) explains these variations with the fact that “the Commission does not seem to be demanding a new broader concept of minority, but rather to be encouraging solutions which can secure internal and international stability” (p.21). Hence, the “Commission’s approach to minority issues in the candidate countries reflects pragmatic concerns for internal and international stability” (Pentassuglia, 2001 p.22). EU officials interviewed for this thesis recognised the problem of the lack of a common approach on minorities,

³⁴ Author’s interview with European Commission official, Brussels, 8 December 2010.

however, argued that the lack of a common standard has not hampered the Union excessively when dealing with these policy areas.³⁵ Still, it was also recognized that in the absence of an EU wide definition it has not always been easy to prescribe exact solutions.”³⁶

While approaching minority policies as an element of democratic consolidation, this research does not underestimate the validity of the claims that “conditionality was [also] a result of the securitisation of minorities rather than part of an agenda to protect or empower” (Galbreath and McEvoy, 2012 p.267). Securitisation denoting the “discursive construction of wider categories of persons and practices as threats” has been considered as a key mechanism in the institutionalisation of the EU area of freedom, security and justice (Guild et al., 2008 p.2). This phenomenon has been introduced also in the relations of the EU with the acceding countries, specifically through the conditionality instrument. In a recent article, Richter argues that “the EU’s approach, which enforces both security and democracy through one instrument, namely political conditionality, has yielded only limited success and has contributed to the emergence of a conflict of objectives” (Richter, 2012). Supporting the view that the EU has enforced both democracy and security through conditionality on minority policies, the assessment of the evolution, consistency and clarity of conditionality examined in thesis is mostly limited to the former. From this perspective the thesis focuses on the use of the FCNM, because literature has argued that “while the EU borrowed the link between democracy and human (and later) minority rights from the CoE, the OSCE provided the EU with the security-based rationale for minority protection” (Sasse, 2006 p.65).

Still, without taking the democratising element of Europeanisation and conditionality as a given, the research takes on board the basic premises on which the securitisation of conditionality are grounded. Recognising these theoretical debates, however, this thesis does not go into normative discussions of the role of the EU. In fact, it approaches and studies the EU’s criteria on national minority policy with their contradictions and studies how they play out at the national arena. It examines in practice the implications of Europeanisation by

³⁵ Author’s interview with European Commission official, Brussels, 8 October 2010.

³⁶ Author’s interview with European Commission official, Brussels, 8 October 2010.

conditionality in relation to national minority policies in the Western Balkans for the process of democratic consolidation.

3.5 Europeanisation by conditionality and democratic consolidation – a dynamic relationship

Having explained how the thesis approaches the issue of Europeanisation by conditionality and democratic consolidation against the background of national diversity, this section studies the relationship between these two processes. In fact, research on the previous enlargement has brought about varying conclusions on the relationship between Europeanisation by conditionality and democratic consolidation. While generally recognising the generally positive dynamics between conditionality and democratic consolidation, literature also puts forward several aspects in which the dynamics between these two processes are conflicting. With respect to the former, the EU's conditionality has been generally considered to have a lock-in effect of liberal forces after the overthrow of authoritarian governments (Vachudova, 2005). Pridham (2005) has further argued that "the EU has had together with the Council of Europe and the OSCE a positive impact over minority rights in the sense that otherwise progress here would have been slighter not least because of societal if not cultural barriers" (p.225).

Still it has been recognised that "negative impacts could also occur notwithstanding the official commitment of Brussels to furthering democratic consolidation in Central & Eastern Europe" (Pridham, 2005 p.226). For example, Grabbe argues that policy choices are technocratic rather than political issues, leading to a deficit of democratic accountability in the whole process (Grabbe, 2001). On the latter aspect, Pridham criticizes the favouring of the executive institutions over the parliament as well as the exporting of the EU democratic deficit in these countries (Pridham, 2006). Innes claims that the EU accession process "could have a debilitating effect, arresting party developments by excluding from political competition those substantive, grass-roots, ideological policy conflicts around which Western Europe systems evolved" (Innes, 2002 p.101). These findings confirm the warnings of the general literature on Europeanisation regarding the intended and unintended consequences of conditionality (Grabbe, 2006 p.49). On a similar note, Radaelli (2000) classifies the extent and direction of Europeanisation in four groups: inertia, absorption, transformation and retrenchment. The last dimension is in fact an instance where the policy may backslide or may be opposed by domestic groups.

Specifically, in relation to conditionality and national minority policies, Sasse argues that the impact can range from gradual legal changes and ethno political participation in government and opposition to a deepening of structural segregation and an increase in political polarisation (2009 p.17). Using this classification as guidance Sasse comes to the following conclusion:

an intense and highly visible international involvement in a politicized issue (or one aspect of them) can produce an overlay of contradictory outcomes: a legal change can hide deeper political or societal problems which might, in fact, have become ingrained in the context of the EU's involvement (2009 p.28).

Similarly, Noutcheva et al (2004) in relation to Europeanisation in post-conflict societies specifically warn against the creation of a “superficial layer of common institutions and policy coordination mechanisms which would exist for the purpose of satisfying EU requirements, but would not enjoy domestic support” (p.26). Having in mind the role of organised minority interests in the countries studied, it is also significant to note the experience from the Eastern enlargement, which shows that “political participation of an ethnic minority party and ethnic power-sharing, encouraged though not caused by the EU's minority condition, can thus prove stabilizing during one stage of the transition process and destabilizing during another” (Sasse, 2009 p.27).

This variety of outcomes of conditionality (including unintended ones) supports the findings of research on the potentially destabilizing effects of the involvement of international organisations in national minority policies. Although earlier research on this topic was not framed specifically in the context of Europeanisation, the mechanisms at work are largely the same. In this sense, Tesser (2003) in her research concludes that although international organisations with significant leverage can lessen the potential of conflict, the external pressure in this area “can have at least two downsides that diminish the effectiveness in lessening the political salience of identity” (p.493). First, the pressure could result in superficial minority protection lacking domestic support and secondly, the presence of these standards can unintentionally encourage ethnic groups to define themselves as national thus creating greater majority-minority frictions (Tesser, 2003).

Moreover, the relationship between these processes in the Balkans is qualitatively different, because of the extended requirements of the EU, significant democratisation obstacles as well as “severe Communist legacy and

systemic problems” (Pridham, 2007 p.454). For Pridham (2007), “this would suggest both more demands on conditionality (thus challenging its limitations) but also potentially more opportunities” (p.455). In the case of the Western Balkans this risk is even higher since the EU has moved further down the path of domestic politics by assessing the national political scene and the relations between the local political actors (See Pridham, 2007). Literature links this attitude with the role the EU has acquired through the brokering of peace-deals in Bosnia and Macedonia especially (Anastasakis and Bechev, 2003). In light of this Chandler (2008) argues that “EU member state-building in the Western Balkans is a clear example of the dangers of the liberal peace approach to post-conflict situations” (p.529). In his work, Chandler (2008) is highly critical of the role of the EU in the Western Balkans arguing that “the externally driven nature of the policy process means that political elites seek to lobby external EU actors rather than engage in domestic constituency-building” (p.529). Contrary to Chandler, O’Brennan (2008) argues that that “the policy being pursued by Brussels is consistent with the expectations of the ‘normative power Europe’ approach to enlargement” (p.508). Similarly, Manners (2002) argues that the EU is a power with normative quality, which should act to extend its norms into the international system (p.252). Although this research will not deal with the role of the EU as a normative power in the Balkans, it recognizes that there have been instances when the EU’s involvement raises concern for the democratic consolidation of these societies. Recognising the potential of EU conditionality, this research will examine the implications of this instrument for the democratic consolidation of Croatia and Macedonia.

Having in mind the above presented debates on Europeanisation, conditionality and democratic consolidation, this thesis extends the findings of the literature on the Eastern enlargement by studying the role of the EU in shaping national minority policies in Croatia and Macedonia. It examines the construction, application and implementation of conditionality in relation to national minority policies over a fifteen year period in order to grasp the consistency and change in conditionality and the role of both the EU and national actors in the operations of this mechanism. Due to the lack of *acquis* in this policy area, the research studies how the EU has used the FCNM and national legislation in the stipulation of conditionality, focusing on the consistency and change of the criteria. Recognising that national minority policies are crucial for the democratic consolidation of the countries studied, the thesis ultimately reflects on the relationship between

Europeanisation by conditionality and democratic consolidation. Doing so, it specifically builds upon recent research which has indicated the potential of increased inter-ethnic polarisation through the EU's involvement in this policy area. As such, it underlines the unwanted effects of EU conditionality in relation to democratic consolidation in the conditions of diversity in post-communism.

3.6 Conceptual limitations

While incorporating the role of international actors in the study of minority policies in the EU accession process, this thesis does not deal with several specific elements related to the shaping of national minority policies in the conditions of post-communism. First, it does not deal with the role of kin and host states of the respective minorities studied. Kin and host states are key actors in the framework proposed by Brubaker (1995) for the study of national mobilisation in the new independent states, building the triadic nexus of minority policies. With the recognition of the role of international actors, revision of Brubaker's model was advocated by inserting the international actors as a fourth variable in his model and forming a into a quadratic nexus (Smith, 2002). In this vein, recent literature on EU accession and minority policies has moved towards the incorporation of the role of kin states. For example, studies have examined if the EU had an effect on the wider geopolitical relationship between the host state and the kin state over national minorities (See Galbreath and McEvoy, 2010). Schulze in a similar project as this one has examined the role of kin state (i.e. Russia) in relation to the minority conditionality in Estonia and Latvia (Schulze, 2009). As this dissertation studies in depth at the role of national minority conditionality both at macro and policy level, looking at the role of kin states would make it unmanageable. In addition, in the Balkans the incorporation of the role of kin states would necessitate an examination of the EU conditions on regional cooperation as a specific feature of this round of enlargement, which would have excessively increased the scope of the study.

Second, this research does not tackle in detail the issue of the Roma minority, which does not fit in the traditional national minority literature. Vermeersch (2006) in his study of Romani politics argues that the Romani movement "does not seem to fit the patterns of ethnic mobilization" in the post-communist world "as they are not seen as a threat to the stability and territorial integrity of an existing state" (p.2). The situation of the Roma became an element of EU conditionality policy in the latter half of the 1990s as a result of

international advocacy efforts and the increasing number of Roma asylum seekers from CEE in the EU (Vermeersch, 2003). The empirical analysis of the role of the EU in the development and implementation of Roma policies has been inconclusive. On the one hand, it has been widely accepted that the development of “pro-Romani policies gained momentum during the accession negotiations” (Cashman, 2008 p.19). Similarly, Swimelar (2008) concludes that minority rights for the Roma, in the accession process “have become institutionalised, empowered in the public realm, and generally accepted as appropriate at the elite level” (p.519). On the other hand, Vermeersch (2003) concludes that the policy changes especially in relation to the Roma were predominantly a result of short-term political considerations, thus minority protection norms remain contested both among EU members and the candidates Vermeersch (2003). Although partly addressing the Roma issue through the macro and policy analysis in relation to EU conditionality, the research does not deal with the specificity of the Romani question.

Third, the use of the conditionality framework in the context of EU accession has its own weaknesses that have implications for this study. First, the use of conditionality instead of Europeanisation frameworks for the study of the role of the EU has been criticized for being too narrow. Galbreath and McEvoy (2010) for example argue for the need to “think beyond the strict confines of conditionality to a broader process of Europeanization concerned with the outworkings of the integration process” (p.360). On the other hand, the use of Europeanisation concept has been criticized due to its potential for overstating the role of Europe and difficulty in demonstrating causality (Radaelli, 2000, Haverland, 2006). Grabbe has underlined that “if we are always looking at the extent of Europeanisation, we may fail to notice that other processes are producing the effects” (Grabbe, 2006 p.48). The problem of causality is linked to the focus of research on case studies where the EU pressures are present without control cases in which this is not the case (Haverland, 2006). Nevertheless, as this research is specifically interested in the operation and development of the conditionality mechanism in a specific policy area for which there are no predetermined policies at the European level, it uses the conditionality framework as a mechanism of the wider Europeanisation. Furthermore, the conditionality framework is considered more applicable for the analysis due to the focus of the study on candidate countries where this is the basic mechanism at work.

Lastly, using the conditionality framework, the study also limits its findings to the literature on EU accession. Because of its largely empirical contribution, theoretical debates on why states comply with international norms are beyond the scope of this study. This in mind, it is important to note that “international norms must always work their influence through the filter of domestic structure and domestic norms, which can produce important variations in compliance and interpretation of these norms” (Finnemore and Sikkink, 1998 p.893). The focus on the formative influence of international norms has been under criticism by Checkel (1999) who has argued that this approach underplays the role of domestic agency and social context. In light of these difficulties, Cortell and Davis (2000) concluded that “a norm’s domestic salience should be established by the analysis of national discourse, state institutions and policies” (p.72). This in mind the study does recognize that minority protection is part of a broader human rights policy at the EU level (Pentassuglia, 2001). Similarly, by focusing on norms which are not consolidated at the EU level, this research does not examine the anti-discrimination policy and the implementation of the respective EU directives, as they’re part of the *acquis* and are usually assessed in compliance studies.

3.7 Conclusions

This chapter examined the main concepts used in this thesis, namely Europeanisation, conditionality and democratic consolidation, and outlined the theoretical framework that underpins the empirical analysis that follows. The objective of this chapter was to provide conceptual clarity and to ground the dissertation in existing research, while also demonstrating how the thesis advances existing findings through the questions it studies. It first examined Europeanisation as the framework for studying the impact of the EU on member states and candidate countries. The examination of Europeanisation foremost focused on the evolution of this concept from its inception with relevance to the member states to its extension to the candidate countries for membership. Looking into the variety of theoretical understandings of this phenomenon, the chapter singled out the instrument of conditionality as a defining feature of the Europeanisation of candidate countries, which is in the focus of this dissertation.

The next section of the chapter examined two approaches for the study of conditionality, through the external incentives model and by studying conditionality as a process over time for the purposes of grasping its changes, as well as formal and informal influences. It focused on the understanding of political

conditionality, specifically in relation to national minority policies. The analysis of conditionality unpacked the dominant external incentives model and its critiques for the purposes of analysing the impact of the EU on minority protection policies. By studying the outcome of conditionality, the external incentives model does not provide tools for further examination of EU's interaction with the domestic political structure and its impact on the policies. The primary difficulty in this respect is that the external incentives model considers EU conditionality as an independent variable, thereby neglecting its politicised and constructed nature. In light of these difficulties of framing the analysis in this framework, the chapter examined the process based approach to conditionality which underscores its constructed nature and the need to analyse the construction and application of conditionality over time. Having in mind nature of the national minority policy area and the intention of this research to examine the operation of EU conditionality, the chapter uses this definition for the purposes of the study. This framework recommends examining the EU's impact on minority politics by tracing the construction of the minority criterion in the EU and national political discourse, official and unofficial documents, in order to understand the EU's role. Having determined the flexibility of these rules in the EU context, the research will focus on outlining how has conditionality developed and been implemented, as well as the similarities and differences between the two cases between 1997 and 2012. In this time period 2005 is considered as a breaking point of two periods studied separately.

Section three reflected on the implications of Europeanisation by conditionality for the democratic consolidation in the conditions of post-communism. It examined how the thesis approaches democratisation and democratic consolidation and the role of multiethnicity in these processes. In fact, the management of inter-ethnic relations was posed as an essential element of democratic consolidation. It also showed that academic literature considers the prospects for democracy building in multi-ethnic societies are bleak. On the other hand, the chapter uncovered the main debates over the accommodation of national minorities through the institutional setting and the lack of an EU consensus on this issue, thus outlining the complexity of setting criteria in this policy area. Overall, this section by recognising the significance of international actors, specifically the EU, in the management of domestic minority policies, underlines their position an integral actor in the democratic consolidation of the

societies examined, laying grounds for the last research question of the dissertation.

The fourth section examined the relationship between the processes of Europeanisation and democratic consolidation, by studying the findings of the literature on the Eastern enlargement and the specificity of the Western Balkans in general. While recognising the literature's positive assessments of this relationship, the chapter has also shown the conditions under which conditionality can undermine the consolidation process. Specifically in the national minorities' policy, the involvement of the EU in highly politicized issues can also lead to further inter-ethnic polarisation. In the Balkans, as outlined in the introduction and in this chapter the EU has obtained a much more interventionist role and thus the scope for influencing democratic consolidation is higher.

Building upon these findings, the thesis will extend the study of Europeanisation by conditionality in relation to national minority policies to the Western Balkans. Conceptually, due to the flexible nature of the minority criterion, conditionality is approached as a process and over time. In light of the findings of this chapter, the thesis fills both a conceptual and an empirical gap in academic literature. In relation to the former, it reflects on the study of Europeanisation by conditionality in the candidate countries and its relationship with democratic consolidation. More specifically, it illustrates the potentially divergent trends between the two phenomena by unpacking of the inconsistencies in the study of non-*acquis* conditionality. At the same time, it also demonstrates the integral role of domestic actors in the conditionality mechanism. Empirically, the thesis addresses a gap in the study of the Western Balkans, as a region with increased salience of the minority issue. In addition, as was shown in the analysis, the EU has been increasingly involved in this region by extending its political conditionality. The different contextual conditions and the extensive role of the EU create new circumstances for the study of Europeanisation by conditionality which are addressed in this thesis. The former are examined in the following chapter which provides a background on the national minority issue and relationship with the EU in both countries under examination, setting grounds for the empirical chapters that follow.

4. Macedonia and Croatia – the minority question and relationship with the EU

The previous chapter provided an analysis of the theoretical background for this thesis by studying the role of the EU in the minority question in post-communist societies. Focusing on these same elements of analysis, this chapter examines the contextual background in the two case studies, in light of the conceptual and methodological indications of its importance for studying the role of the EU at the national level. Although literature has reflected on the importance of consideration of local circumstances, studies looking at role of external actors still suffer from criticisms of context under-appreciation (See Stewart, 2009). The importance of the local context in this thesis is amplified for the purposes of this analysis because the existing literature predominantly focuses on the experience of the Eastern enlargement countries.

As explained in the previous three chapters, in the Balkans, contextual factors create different conditions for the involvement of the EU in comparison to the Eastern enlargement. While the countries of the Eastern enlargement were undergoing social, political and economic transition, in addition, in the Western Balkans all of them were undergoing state and in some cases nation building. The creation of new states and new majorities and minorities as explained in the introduction amplified the importance of the minority issue in these societies. The legacies of the Yugoslav times through the ethnic conflicts that have plagued the recent history of the region add an additional layer of complexity to the minority issue in these countries. At the same time, the widely recognised failure of the EU to deal with the Yugoslav wars also complicates its role in the region and the application of conditionality.

In these regional circumstances, as explained in the introduction, Croatia and Macedonia have been selected for the analysis due to their contractual relations with the EU and the importance of national minority policies. The two countries are the first SAA signatories and candidates for accession in the Balkans. National minority policies in both of them carry significance for the processes of democratic consolidation albeit due to different reasons. In Croatia due to the wars of the first half of the 1990s, which involved the Serbs as the largest community, the national minority question carries importance for the reintegration of this group in the Croatian society. Macedonia foremost due to the large percentage of non-majority communities is built on a delicate inter-ethnic

consensus, thereby placing the minority question at the heart of its democratic consolidation.

This chapter reflects on these regional and country contextual conditions and their significance for the involvement of the EU in national minority politics in sections on each of the countries. These sections deal with the minority question in the respective country since independence, the minority policies and electoral politics and the relationship with the EU. The background on these three elements is necessary foremost because of the objective of this thesis to study the role of the EU in shaping national minority policies in Croatia and Macedonia. By looking into the minority question and electoral politics since independence the chapter provides the context in which the EU has attempted to shape minority policies through its instrument of conditionality. In addition, these two sections on each of the case studies provide the background on the main domestic actors which, as explained in chapters two and three are considered an integral part of the operation of the conditionality instrument. By providing a general overview and the contested issues which are a part of the relationship of both countries with the EU, the chapter also contextualises the EU's involvement in minority policies in the broader EU engagement with the region. With this in mind, the objective of this chapter is not to provide an extensive overview of the minority policies in Macedonia and Croatia or EU involvement in the Balkans, but to set the basis for the empirical analysis that follows in chapter five, six and seven of this thesis.

4.1 Macedonia

4.1.1 The national minority question in Macedonia since independence

Macedonia gained independence without bloodshed from the Yugoslav federation; however amidst significant challenges both in the region and internally. The primary external challenge was the obstruction of the country's EU and broader international recognition, due to the dispute over the name with Greece.³⁷ Internally, the management of the minority issue topped the agenda. On the one hand, the majority ethnic Macedonians "viewed their republic as a national state" and a culmination of their work for statehood (Rossos, 2008 p.257). On the other, both the referendum on independence and the first constitution of independent Macedonia were not supported by the Albanian community, representing a quarter of the population in Macedonia.

³⁷ See section on relationship between Macedonia and the EU below.

Independence was declared on September 8, 1991 after a referendum in which majority of the citizens opted for independence albeit the representatives of the Albanian community did not come out to the polling stations. Similarly, the Albanian MPs did not support the new constitution of independent Macedonia which was adopted by the Parliament in November 1991.

The boycott of the referendum and the Constitution originated in the discontent with the preamble of the new constitution defining Macedonia as the national state of the Macedonian people and other nationalities.³⁸ The term nationalities corresponded with the pre-1990 Yugoslav and Macedonian legislation which distinguished between nations (members of the six constituent Republics), nationalities and ethnic groups (See Jović, 2001). In the Yugoslav period, the Albanians had a status of nationalities, higher than the status of a minority. The new status of a nationality within independent Macedonia was perceived as degrading and was contested by the Albanian parties, which demanded the Albanians in Macedonia to be considered as *a constituent nation* (See Jović, 2001). However, “the Albanians did not come out at the polling stations not because they opposed the independence of Macedonia, but the other part of the referendum question which implied the possibility of a Union with the other states of former Yugoslavia”, having in mind the already evident attack by Serbian authorities on the rights of Albanians in Kosovo.³⁹

In practice however, the Albanian population and their representatives (as well as representatives of other minority groups) participated in the operation and functioning of the institutions of the state. The highest level of cooperation was demonstrated in the ‘informal’ power sharing between the main Macedonian and Albanian parties institutionalised in partaking in a coalition government. Hence, in addition to the party winning most of the votes from the Macedonian block, all governments since independence have consisted of at least one Albanian party as well.⁴⁰ Still, despite minority representation in government and Parliament, contestation of the status of the Albanian community on the ground continued during the 1990s. In the second half of the 1990s, there were major

³⁸ Constitution of the republic of Macedonia available at the official website of the Assembly of the Republic of Macedonia. Available at: <http://www.sobranie.mk/en/default.asp?vidi=ustav> [Accessed 09 October 2009].

³⁹ Author’s interview with CSO representative, Skopje 5 January 2011.

⁴⁰ This feature of the Macedonian public space has been usually put forward as the main reason as to why the country avoided the bloodshed of the rest of the Yugoslav federation.

demonstrations and incidents involving issues related to the use of symbols, languages and establishment of higher education institutions. Research in this period has argued that Macedonia continues to be ruled on the basis of a delicate ethnic consensus (Dyker, 1996 p.2).

The culmination of these problems was a six-month internal conflict between the Macedonian police forces and the Albanian paramilitary forces *the National Liberation Army* which took place in the first half of 2001. The conflict was concluded with the signing of the OFA in August 2001 under significant international (including EU) pressure leading to changes in the disputed constitution.⁴¹ The Agreement established a form of power sharing within the system instituting a minority veto, extending the use of the languages of the non-majority communities which represent over 20% at the national and local level, the principle of adequate and equitable representation and decentralisation. With the OFA and the subsequent constitutional changes setting up a largely consociational system, the neutral term “non-majority communities” was introduced both in the constitution and relevant legislation in the country, replacing the previously contested nationalities.⁴²

The Agreement was signed in the midst of continuous involvement and coordination between the relevant domestic political actors as well as external actors, such as the US, EU, NATO and OSCE. It has been argued that “the conflict between majority and minority, in which the minority enjoyed the patronage of a much smaller external homeland (Albania), itself dependent on the EU, was *actively* controlled by the EU with an *auxiliary* role for the structural perspective” (Berg and van Meurs, 2002). The signatories of the OFA are the two major ethnic Macedonian and two Albanian parties, the president of the country at the time and the EU and US as external guarantors of the agreement. In principle, the Agreement was drafted in cooperation with the domestic actors, but with large external influence with respect to its key elements. Its provisions in fact will become key segments of EU conditionality which are examined in the empirical chapters of the dissertation.

⁴¹ Text of the Ohrid Framework Agreement available at the website of the Sector for implementation of the Ohrid Framework Agreement, Government of the Republic of Macedonia www.siofa.gov.mk [Accessed 09 October 2009].

⁴² While recognising this specificity, for the purpose of uniformity of terminology, this research will predominantly use the term minority. When discussing Macedonia post-2001, the thesis uses the term “non-majority communities”. Generally, the term minority will be used as usually is the case in the relevant literature.

EU officials have commonly referred to the agreement as the success story of the Balkans which provided for the establishment of a truly multi-ethnic democracy.⁴³ However, its implementation has been faced with problems primarily in relation to the elevating the significance of ethnicity as most relevant cleavage. Academic literature has described this phenomenon as institutionalisation of ethnicity, denoting the representation of ethnic groups as *ethnic groups* in the all branches of government (See Bieber, 2005a). In addition, the OFA has triggered dissatisfaction of the smaller communities, such as Roma, Turks etc, which do not see the Agreement acting in their benefit. The 20% threshold stipulated by the OFA is commonly perceived as discriminatory against the smaller communities (Engstrom, 2002). Hence, these communities which represent roughly 10-12% of the population perceive the OFA as an instrument privileging the Albanian community. In such circumstances, the number of people belonging to a certain minority at the central and local level carries increasing significance, as will be shown in chapter seven of this dissertation.

In the post-OFA period only one census was conducted in November 2002, according to which 64.2% of the population are ethnic Macedonians, 25.2% are ethnic Albanians, 3.9% Turks, 2.7% Roma, 1.8% Serbs, 0.8% Bosniaks, 0.5% Vlachs and 1.0% belong to the other ethnic communities.⁴⁴ The figures are the ones that will be used in this research, since this is the last census which was conducted in Macedonia. The following census was originally scheduled for April 2011, but due to extraordinary elections and lack of agreement on the methodology was postponed for October 2011. Although the census started in October 2011, it was interrupted four days before the completion due to a resignation of the State Census Commission. In the official announcement the SCC justified the suspension on grounds of different interpretation of the methodologies. In fact, "the issue is essentially ethno-political: the Albanian political faction insisted on a census methodology that counted the many Albanian emigrants, some of whom may not have returned to the country for

⁴³ Speech of Erwan Fouerre EU Special Representative and Head of the European Commission Delegation in Skopje, Macedonia delivered at the Conference: *The Western Balkans. Political Order, Economic Stability and International Engagement*, Berlin 27 October 2006, available at: <http://www.delmkd.ec.europa.eu/en/key-information/key-speeches/Speech_271006.pdf>. [Accessed 10 September 2011]

⁴⁴ State Statistical Office of the Republic of Macedonia, Final data of the census of population (2002), <http://www.stat.gov.mk/pdf/kniga_13.pdf> [Accessed 15 September 2010].

years” (Karajkov, 2011). At the same time, according to the standard Eurostat methodology persons living abroad for more than 12 months are not registered with the census, thereby creating the internal problem within the Commission and among the government coalition partners. Overall, numbers have acquired increasing importance in Macedonia since they serve as a sole basis for determination of rights (See Jović, 2011).

4.1.2 Electoral politics and the national minorities

Competitive politics in Macedonia has developed against the lack of historical democratic tradition and has been shaped by the communist past and the population’s ethnic heterogeneity. Moreover, in Macedonia specifically, the ethnic division corresponds with other issues of personal salience like religion, languages and the rural-urban divide. Hence, in practice, two parallel blocks of political parties have developed in the country – the ethnic Macedonian and Albanian. Besides these two blocks of parties, ethnically based parties of the smaller communities (Turks, Serbs, Roma, etc) were also established since independence. According to Bieber, the electoral system in Macedonia and its evolution from majoritarian to proportional have been shaped by the inter-ethnic tensions between the two biggest groups, the Macedonians and Albanians (Bieber, 2005b).

Since independence seven rounds of parliamentary elections have been held in Macedonia (1991, 1994, 1998, 2002, 2006, 2008, and 2011). As mentioned before, a primary feature of electoral politics in Macedonia has been the existing informal agreement between the elites for building inter-ethnic government coalitions. The communist successor party the Social Democratic Union of Macedonia (SDSM) in coalition with the ethnic Albanian Party for Democratic Prosperity (PDP) remained as the main government party in Macedonia until the elections of 1998, when the parliamentary elections were won by the rightist Internal Macedonian Revolutionary Organisation – Democratic Party for Macedonian National Unity (VMRO-DPMNE), thus initiating the first turnover of power. Between 1998 and 2002 VMRO – DPMNE was in coalition with rightist Democratic Party of Albanians (DPA) forming a rather unusual government of both ethnically defined right oriented parties.

The second turnover of power occurred in 2002 when the communist successor party SDSM won the elections and formed a coalition with the newly established Albanian party Democratic Union for Integration (DUI). This party was

formed of members of the National liberation army who participated in the 2001 conflict and attracted the largest number of voters at the 2002 parliamentary elections in the Albanian block of parties. This coalition government was in power until 2006 when right wing VMRO-DPMNE was re-elected and formed a coalition with the DPA, as the party they had already governed with. However, as DUI won more votes from the Albanian parties concerns were expressed about the 'legitimacy' of the governing coalition primarily in terms of representing the Albanian minority and later boycotted the parliament for several months. This tendency, hence, highlights the challenges that ethnically plural states present those governing them, which more homogenous societies do not face (See Ishiyama and Breuning, 1998).

Following a veto from Greece on the country's membership to NATO in April 2008 extraordinary elections were called for June of the same year, at which VMRO-DPMNE won the majority of the votes and was given the mandate to establish a Government. Rather than continuing their cooperation with the DPA, the choice of the partner in the Albanian block was DUI, the party that once more won the majority of the Albanian votes. This decision among other reasons was linked to both explicit and informal EU pressure. On the matter, in 2006 the EU Head of Delegation and Special Representative of the Council commented that "it would be logical if the Government consisted of the parties that won the most votes" (2006). At the national level, the statement was widely interpreted as an attempt of the EU to influence the formation of the government coalition mostly with respect to the party representing the Albanian community. National stakeholders have singled out this event as an example of "direct interference from the EU" and have generally considered the statement as a disruption of the internal dynamics of the Macedonian political scene.⁴⁵ Such debates illustrate the specific embedded nature of the EU in the national politics of Macedonia since the OFA, which has been implemented with constant supervision from the Union and its institutions.

4.1.3 Relationship with the EU

In terms of the involvement of international actors, especially the EU, the country has been traditionally cooperative with the international community, although the establishment of official relations with the EU was complicated by

⁴⁵ Author's interview with former Vice Prime Minister for EU Affairs, Skopje, 25 December 2010.

the name dispute with Greece, elaborated below. In fact, Macedonia since the beginning of the 1990s has been open to international interventions – UN had a unique preventive mission, then in the second part of the UN Preventive Deployment force mandate they got the competences not to oversee the borders but to deal with inter-ethnic relations.⁴⁶ The request for this mission came directly from the Macedonian authorities in light of the Yugoslav wars. Similarly, the EU's engagement in Macedonia began by funding projects in the framework of the European Community Humanitarian Aid Office (ECHO) in 1992 mainly targeting refugees from the Yugoslav wars.⁴⁷

In light of these forms of engagement, in the early 1990s Macedonia received attention from scholars of conflict prevention and management looking at the other international organisations, but not the EU (Ackermann, 2000). Koinova (2011) highlights that analysis is missing because the EU had little involvement in Macedonia at the time (p.810). In the same vein, Vachudova (2003) has questioned why the EU did not use political conditionality in the course of the 1990s since Macedonian governments were open to conditional Western assistance in this period (p.150). Stakeholders at the national level have explained this phenomenon against the background that many European representatives, especially the MEPs believed that the inter-ethnic relations in the country were completely amicable, although they would later be proven wrong.⁴⁸

In fact during the early 1990s the establishment of relations with the European Community at the time was strained due to the objections of Greece to the constitutional name "Republic of Macedonia". Both countries are engaged in UN mediated talks for finding a solution, however even these have not given results (For a factual background see Karajkov, 2008). At the Lisbon summit in June 1992 under Greek pressure the EU decided to withhold recognition of Macedonia. The Council conclusions expressed "readiness to recognise that republic within its existing borders according to their Declaration on 16 December 1991 under a name which does not include the term Macedonia" (Council, 1992). These events followed the positive opinion of the EU-appointed Badenter

⁴⁶ Author's interview with former Minister of interior and foreign affairs, Skopje, 22 February 2011.

⁴⁷ The European Union and the former Yugoslav Republic of Macedonia, <http://ec.europa.eu/enlargement/archives/ear/fyrom/main/mac-eu.htm>. [Accessed 15 September 2010]

⁴⁸ Author's interview with former Vice Prime Minister for EU Affairs, Skopje 23 December 2010

Commission⁴⁹ which was vested with a mandate to “rule by means of binding decisions upon request from *valid Yugoslavian authorities*”, on the basis of rights of minorities (Pellet, 1992). A consensual (albeit temporary) solution was found with the country joining the UN in 1993 under a provisional name “the former Yugoslav Republic of Macedonia”. Formal diplomatic relations between Macedonia and the EU were not established until December 1995, after the signing of the Interim Accord between Macedonia and Greece in September of the same year.⁵⁰ With the Interim Accord, Greece obliged itself not to veto Macedonia’s entry into regional and international organisations under the provisional reference, thus creating conditions for establishing full diplomatic relations with the EU.

In the latter half of the 1990s the EU-Macedonia relationship developed as part of the regional approach for the Western Balkans and also by its constructive role during the NATO intervention in Kosovo.⁵¹ The country was the first one in the region to sign an SAA in early 2001. However, the signing of the SAA coincided with the inter-ethnic conflict which lasted between February and August 2001. The EU in cooperation with NATO took a leading role in managing and containing the conflict and was even a guarantor and a co-signatory of it. In the post-2001 period, however, the OFA is considered as central to the EU relationship with Macedonia.⁵² Whereas the implementation of the Agreement was channelled through domestic institutions, the EU constantly provided external support and at times pressure for its implementation.⁵³ Javier Solana, the EU High Representative for CFSP was directly involved in the OFA negotiations which led to widely accepted maxim in the national political discourse that ‘the road to Brussels leads through Ohrid’ (Solana, 2004).

In addition to this form of political involvement, after the 2001 crisis, the first military peacekeeping mission in EU history Concordia was deployed in

⁴⁹ An international arbitration Commission consisting of the chair Mr Robert Badinter, President of the French Constitutional Council, the Presidents of the German and Italian Constitutional Courts, the Belgian Court of Arbitration and the Spanish Constitutional Tribunal.

⁵⁰ Ministry of Foreign Affairs of Republic of Macedonia, “Relations between Republic of Macedonia and EU”, <http://www.mfa.gov.mk> [Accessed 16 June 2010]

⁵¹ For more see chapter 6 on EU conditionality and minority policies between 1997 and 2004.

⁵² Author’s interview with European Commission official, Brussels, 11 October 2010.

⁵³ Author’s interview with former Vice Prime Minister for EU Affairs, Skopje 23 December 2010.

Macedonia followed by the EU police mission Proxima in April 2003. My interviewees underlined that “through the involvement on the ground, the EU gained a big stake in Macedonia’s future. In some way it made Macedonia important to the EU almost rather than the other way around.”⁵⁴ This role was largely accepted by local elites as well. The president of Macedonia in a speech highlighted that “our ambition is full membership in the Union, and I would like to see this mission [...], as a step in that direction. The more of the EU we have in Macedonia, the more of Macedonia there will be in the EU (Trajkovski, 2003).” Hence, Macedonia is an indicative example for studying the involvement of the EU in the Balkans, as a country which has been at the same time both a frontrunner in the EU accession process and a laggard with extensive EU involvement on the ground. In response, my interviewees have pointed that “Macedonia is a candidate for EU membership and is being monitored from the Council. Hence, there is a dilemma whether the EU is supporting the country or is intervening with elements of a soft protectorate.”⁵⁵

The issue that further adds further complexity to the relationship between Macedonia and the EU is the continuation of dispute between Macedonia and Greece over the constitutional name of the country. This issue has been directly impeding Macedonia’s accession process since 2009 when the Commission recommended the start of the accession negotiations dependent upon finding a mutually acceptable solution for the name issue. In its 2009 report, the Commission underlines that “maintaining good neighbourly relations, including a negotiated and mutually acceptable solution to the name issue, under the auspices of the UN, remains essential” (EC, 2009b p.24). The recommendation for the negotiations has been confirmed every year since, but there is no progress on resolving this issue and therefore, negotiations have not commenced (For an analysis of the EU's role in the dispute see Mavromatidis, 2010). In the Enlargement Strategy of 2012, the Commission announced it “is ready to present without delay a proposal for a negotiating framework, which also takes into account the need to solve the name issue at an early stage of accession negotiations” (EC, 2012a p.25).

⁵⁴ Author’s interview with think tank analyst, Brussels, 11 October 2010.

⁵⁵ Author’s interview with former Ambassador to the EU, Tetovo, 22 December 2010.

4.2 Croatia

4.2.1 The minority question in Croatia since independence

The Republic of Croatia, with its Western neighbour Slovenia declared independence on 25 June 1991 (On the communist rule see Cohen, 1997). The Badinter Commission⁵⁶ vested with a mandate to “rule by means of binding decisions upon request from *valid Yugoslavian authorities*” made a reservation as to the positive opinion on independence regarding Croatia on the basis of rights of minorities (Pellet, 1992 p.178). The Constitution of independent Croatia of December 1990 redefined the republic as a national state of the Croats, with Serbs, who used to be constituent nations, as an ethnic minority.⁵⁷ In contrast, article 1 of the 1974 Constitution of Socialist Republic of Croatia, defined it ‘as a national state of the Croatian people, state of the Serbian people in Croatia and state of nationalities living on its territory’.⁵⁸ This change which was perceived as degrading by the Serbs in Croatia, which was a general fear of all groups in the Yugoslav federation (Jović, 2001).

In light of this dissatisfaction, the referendum on Croatian independence was boycotted by the Krajina Serbs (Krajina is a region in Croatia), who organized a separate vote on Serbian autonomy held in Knin, Benkovac and Obrovac (Petričušić and Žagar, 2007). In December 1991 the Krajina Serbs adopted their own constitution and proclaimed the independent Republic of Srpska Krajina, which functioned as a para-entity until mid-1995. In addition to Krajina, two other autonomous districts were established: Slavonia, Baranja and Western Sirmium as well as Western Slavonia. Besides the constitutional changes, in 1991 the Croatian Parliament passed the Charter on the Rights of Serbs and other nationalities in the Republic of Croatia, which guaranteed self-government to the regions of Glina and

⁵⁶ An international arbitration Commission consisting of the chair Mr Robert Badinter, President of the French Constitutional Council, the Presidents of the German and Italian Constitutional Courts, the Belgian Court of Arbitration and the Spanish Constitutional Tribunal.

⁵⁷ Constitution of the Republic of Croatia, Official Gazette No. 56/1990 22.12.1990, <http://narodne-novine.nn.hr/clanci/sluzbeni/1990_12_56_1092.html> [Accessed 05 March 2010], this was confirmed by my interviewees as well.

⁵⁸ Constitution of the Socialist Republic of Croatia Official Gazette 08/1974 of 22 February 1974, <http://www.pravo.unizg.hr/download/repository/Ustav_Socijalisticke_RH_1974.pdf> [Accessed 04 March 2013]

Knin.⁵⁹ Those provisions, however, were never implemented because Serbian rebels occupied exactly those parts of the territory where autonomy was to be exercised (Petričušić and Žagar, 2007).

In effect between 1991 and 1995 a third of the territory of Croatia was occupied by the local Serbs and the Yugoslav People's Army. According to Cohen (1997), in this period, "Croatia had begun to disintegrate into two jurisdictions: one under the control of the Zagreb authorities, and another under the control of rebellious Serbs" (p.82). At the same time, within the Serb community the demands during this period differed and changed over time, as demonstrated below in the section on electoral politics as well (For differences among the Serb leaders in Croatia see Caspersen, 2003). In May and August 1995 with the military operations Flash and Storm the regions of Western Slavonia and Krajina were returned under control. The two operations were accompanied by accusations for ethnic cleansing of the Serb minority. Officials at the time have rejected the idea of ethnic cleansing on the grounds of public calls for the Serb population not to leave their homes. On 12 November 1995 with the Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium, these regions were peacefully reintegrated in the Croatian state. Due to the utmost significance of these events, analysts have argued that the minority policy in the 1990s in Croatia had two distinct periods: one before the Erdut Agreement of 12 November 1995 and in the period post-this Agreement (Trifunovska, 1999). Similarly, Cohen (1997) pointed that "the territorial fragmentation and economic disruption of Croatia resulting from the Serbian rebellion of 1990-1991, and the so-called "homeland war" during the second half of 1991, would shape the tenor of the country's post-communist development during the next five years" (p.84). In this direction, the war of the 1990s was understood as just and for "the liberation of occupied Croatian territories", thus, representing "the Croats as victims of Serbian aggression and desire for territorial expansion" (Zambelli, 2010 p.1666).

At the same time, however, Croatia was also participating in the war in neighbouring Bosnia where Croat separatists established a separate political unit similar as in the case of the Serbs in Croatia. The war in Bosnia was a conflict between the three entities (Bosnian, Serb and Croat) and there is evidence that

⁵⁹ Official Gazette 31/91 [Povelja o pravima Srba i drugih nacionalnosti u Republici Hrvatskoj] Charter of the rights of the Serbs and other nationalities in the Republic of Croatia, <http://narodne-novine.nn.hr/clanci/sluzbeni/1991_06_31_876.html>[Accessed 04 March 2013].

paramilitaries from Serbia and units of the Croatian army took part in the war (See Zakošek, 2008). Thus, “the Croatian and Bosnian wars were partly interconnected in military terms and included some military actions that took place in both countries” (Zakošek, 2008 p.593). In fact the Croatian president Tudjman, “while demanding international recognition for Croatia within its existing boundaries, [...] conspired to undermine Bosnia’s territorial integrity” (Silber and Little, 1996 p.292). International pressures on Tudjman, predominantly through US pressures were the one of the main reason for withdrawing formal and informal involvement of Croatia in the Bosnian war and strained the country’s relations with the West at times.

Both as a result of the Serb rebellion and their governing in the occupied areas between 1991 and 1995 as well as the operations Flash and Storm, Croatia in the 1990s experienced swift population movements. Prior to 1995, in the areas under Serb control “as a consequence of serious human rights violations committed by the de facto Serb authorities against the ethnic Croats, the number of Croats decreased significantly [...] making room for the Serbian refugees from other parts of Croatia to move into these territories” (Trifunovska, 1999 p.474). The operations Storm and Flash on the other hand are estimated to have resulted in approximately 130 000 Serbs that fled from Krajina to Bosnia – Herzegovina and Serbia between August and November 1995 (Trifunovska, 1999, Petričušić and Žagar, 2007).⁶⁰ These movements were reflected in the demographic structure since the results of the April 2001 census showed that 7.47% of Croatia’s population identify as national minorities noting a decrease of 50% in comparison to 1991.⁶¹ At the same time the total population of Croatia decreased 7.25%, while the share of the majority Croatian nation in the total population increased for 11.53% (for a detailed overview see Tatalović, 2006).⁶² In addition to the changes in demographic structure, the military reintegration of the areas of Western Slavonia and Krajina and the peacefully reintegrated territories under the

⁶⁰ Numbers differ, according to Cohen 150 000 – 200 000 Serbs fled, see COHEN, L. J. 1997. *Embattled democracy: postcommunist Croatia in transition*. In: DAWISHA, K. & PARROT, B. (eds.) *Politics, Power, and the Struggle for Democracy in South-East Europe*. Cambridge Cambridge University Press.

⁶¹ See Annex on census results.

⁶² For info on 1981, 1991, 2001 and 2011 censuses see Annex. The results of the last census are not used in this thesis as during the fieldwork and in the entire pre-accession period, the primary importance in Croatia was assigned to the discrepancy of the numbers between 1991 and 2001. In such circumstances, the results of 2011 were issued too late, in 2012 in order to impact the policies studied.

Erdut Agreement stand in sharp contrast one to the other in relation to implementation of minority policies. In the military reintegrated areas, the difficulties associated with the return of refugees and restructuring of the institutions post-1995 posed additional burdens in an already complex situation. These circumstances explain why the EU conditionality is mostly focused in the Serb community in Croatia, as is the case in the dissertation as well.

In addition to the ethnic war, independent Croatia has had a rather different experience with the Italian, and Czech minorities living in the country, which are rather well integrated. Most of the Italians live in communes of the Istrian County which has had exceptional multinational character. According to Petričušić, “members of the Italian minority in Croatia cling towards the regional political options that are advocating regional development of Istria,” (Petričušić, 2008 p.65). Istria was the least affected by the war in the early 1990s, although Croatian refugees were being resettled to Istria to diminish the number of Italians in the area (Klemenčič and Zupančič, 2004). This was not the case with the Hungarian minority most of which lived in war affected areas and was largely displaced. According to Stjepanović (2012), “the Istrian regionalist politicians chose another path and a different legitimising narrative, that of European regionalism”, foremost supported by the Istrian Democratic Assembly party (p.21). At the same time, “the argument that Istrian identity had a ‘European world view’ went hand in hand with the view that Istria was a special region because of its Italian minority” (Bellamy, 2003 p.127).

4.2.2 Electoral politics and national minorities

Since independence, seven cycles for Parliamentary elections were held in Croatia (1990, 1992, 1995, 2000, 2003, 2007 and most recently 2011). Following the 1990 victory of the Croatian Democratic Union (HDZ), most of the Serbian representatives boycotted the Croatian Parliament and participated in the alternative governing structures in the Serb controlled territories. In light of this, “the ‘Serb question’ in Croatia ceased to be a democratic question and became a question of stateness” (Zakošek, 2008 p.598). As to the representation of Serbs, the Serbs mobilised and created the Serbian Democratic Party (SDS) in 1990 which gained five seats in Parliament. The weak result was foremost linked to the fact that in this period most of the ethnic Serbs voted for the reformed communists the Social Democratic Party (SDP), as has been argued both by research and

confirmed by my interviewees (Caspersen, 2003).⁶³ As a result, at the time, most of the MPs of Serb origin belonged to other parties, rather than the Serb Democratic Party.

The SDS remained the only Serbian party until the 1995 elections and in this period it radicalised and served as political and military organisation in the Serb controlled territories. In the meanwhile, in the non-Serb controlled areas, the Serbian National Party was established (SNS) which initially supported the Croatian government and participated in the institutional system, whereas it took a less conciliatory course in the second half of the 1990s. Since the SDS did not participate in the elections, in 1995 the SNS competed with Milorad Pupovac, a Croatian Serb intellectual nominated by the Social Democratic Action of Croatia, a splinter of the SDP at the time. Hence, on the 1995 elections there was for the first time intra-Serb competition for the parliament seats. After the reintegration of all territories, the Independent Serbian Democratic Party (SDSS) was formed in 1997 aiming at assisting the integration of Serbs in Croatia by merging with the Independent Serb Party established by Pupovac in 1995. In the same year the Serb National Council was established as an umbrella institution of both the political parties and various organisations representing the Serb interests in Croatia (For a detailed analysis, see Caspersen, 2003).

Between 1990 and 2000 Croatia was under the rule of the HDZ and was heavily influenced by the strong personality of the president Franjo Tuđman supported by the majoritarian electoral system and the semi-presidentialism which underpinned this first decade of Croatian independence. In 1990, the HDZ for example won around 42% of the votes providing them with 60% of the mandates in the Parliament (See Kasapović, 1993). In addition, “having been the leading figure in the process of securing independence for Croatia, Tuđman was sometimes referred to as *the father of the nation*” (Jović and Lamont, 2010 p.1613-1614). The Tuđman regime was characterized by “anti-Serb resentment and the inclination was towards ‘nationalising state policies’ and defining Croatia as a nation-state of Croats” (Zakošek, 2008 p.598). Besides the nationalisation of the state, the regime was accompanied by formal and informal discrimination against minorities. For illustration, in late September 1995, the parliament ‘temporarily’ suspended certain provisions of the Constitutional Law relating to

⁶³ Author’s interview with CSO representative, Zagreb, 21 June 2011, Author’s interview with Brussels correspondent, Brussels, 13 October 2010.

the Serb minority, which included representation in institutions as well.⁶⁴ Remaining in power until his death in December 1999, Tudjman's rule has been characterised as semi-democratic at best or more commonly as semi authoritarian (See Jović and Lamont, 2010, Kasapović, 2000). By the end of the 1990s, however, the rule of HDZ was faced with a legitimacy crisis and Tudjman grew increasingly isolated demonstrated in the suspensions of EU aid and assistance, request for sanctions from the UN Security council and similar, examined in the next section.

At a general level and especially in terms of the response to minorities the year 2000 was a turning point for Croatia. 2000 is the year of the first turnover of power, which occurred with the former communist SDP winning the simultaneous parliamentary and presidential elections. In addition, in 2000 the political practice of building coalition governments in Croatia was introduced for the first time (See Kasapović, 2004). The 2000 elections were also followed by constitutional changes aiming at strengthening the parliamentary dimension and weakening the power of the President, adopted at the end of 2000. In addition, the electoral system underwent change by replacing majoritarianism with the current proportional representation in 10 electoral districts, in addition to a district for the diaspora and one specifically designed for 8 guaranteed seats for the ethnic minorities, out of which 3 for the Serb community. The reforms aimed at dismantling the authoritarian tendencies of the Tudjman era and as will be shown in the next section ending the isolationist foreign policy.

The second turnover of power occurred in 2003 when HDZ was voted in power again which was seen as a test as to the 'reforming' of the party, in light of its legacy of the first decade of independence. "Knowing that the image of the HDZ would not be an asset [the new leader of the party and prime minister] Sanader worked hard to change it both internationally and internally" (Vlahutin, 2004 p.30). In fact, after these elections HDZ formed a coalition government with the minority representatives, including the SDSS. The coalition of 2003 between HDZ and the Serb minority representatives signified a major change in terms of

⁶⁴ Constitutional Law on Temporary Suspension of the Constitutional Law on Human Rights and Freedoms and the Rights of Ethnic and National Communities or Minorities, Official Gazette 68/1995. [Odluka o proglašenju Ustavnog Zakona o privremenom neprimjenjivanju pojedinih odredbi ustavnog zakona o ljudskim pravima i slobodama i o pravima etničkih i nacionalnih zajednica ili manjina u Republici Hrvatskoj] <http://narodne-novine.nn.hr/clanci/sluzbeni/1995_09_68_1192.html> [Accessed 04 May 2010].

putting minority policies and refugee return on the government agenda.⁶⁵ At the same time, in the discourse of both parties the coalition was justified “specifically in terms of prospective accession to the EU” (Djuric, 2010). In fact, most of my interviewees highlighted the 2003 coalition government as a demonstration in practice of the general shift in minority policies in Croatia after 2000. The HDZ subsequently won the elections in 2007 and remained in power until 2011 with the support of the minority representatives, managing the entire EU accession process of Croatia and signing the accession treaty of Croatia in December 2011. The last electoral change took place at the end of 2011 when the SDP with a big supporting coalition won the parliamentary elections. The EU accession negotiations were concluded by then, i.e. in June 2011, although the pre-accession monitoring from the European Commission was still in force until Croatia’s accession to the EU in July 2013.

4.2.3 Relationship with the EU

Similarly as with the minorities, the Croatian relationship with international actors in the first decade of independence was not been easy. In fact, although independent Croatia was based on the narrative of belonging to Europe, by the mid-1990s, Tudjman criticized Europe for being inactive on the Yugoslav wars (Jović, 2006). This has been also noted in research arguing that “Croatian citizens’ distrust of the EU developed early in the 1990s, partly because of the Union’s efforts to keep Yugoslavia together and its inactivity in stopping the wars (Fisher, 2006 p.204-205). In general, academic research has argued that the policies of the international community towards the region were diverse, however “the instruments used were often inadequate, untimely, ineffective and inconsistent” (Zakošek, 2008 p.602). Nevertheless, the European orientation and belonging of Croatia were underlined in the public discourse.

In light of these conflicting objectives, the establishment and development of the EU-Croatia relationship has not had a linear path, although the Union recognised Croatia as an independent state already in 1992. In 1992, the Commission presented a Proposal to include Croatia in the PHARE Programme, but it was rejected from the Council and EP on grounds of insufficient respect of human rights (CORDIS, 1996). In March 1995, the EU agreed to start negotiating a cooperation agreement with Croatia and to extend PHARE

⁶⁵ This was confirmed to me by a majority of the interviewees.

assistance to the country. In August of the same year, both processes were suspended following the operations Flash and Storm, although in January 1996 the PHARE programme was re-opened to assist the reconstruction of Eastern Slavonia (See EC, 1996). Overall, during the first five years of independence the war in Croatia as well as the role of Croatia in the Bosnian war heavily strained the relationship with the EU.

At the same time, Croatia reluctantly joined the EU Regional Approach of 1997, devised specifically for the former Yugoslav countries and Albania, examined in chapter five. The 1996 launching of the Regional Approach of the EU was foremost criticized because of its association with the Western Balkans, which was starkly opposed by Tudjman at the time. For illustration, in 1997 the Croatian constitution was amended by introducing a prohibition to “initiate any procedure for the association of the Republic of Croatia in alliances with other states if such association leads, or might lead, to renewal of a South Slavic state community or to any Balkan state alliance of any kind”.⁶⁶ Croatian intellectuals and academic literature have linked the introduction of this specific legal obligation to the launching of the EU Regional Approach, examined in chapter dealing with the 1997-2005 period (Rodin, n/a, Jović, 2006). At the same time, however, the European orientation of Croatia was stressed, and “in this sense EU membership is not only a goal in itself, but also a means of potentially recognising the de-Balkanising of Croatia” (Zambelli, 2010).

The relationship with the EU was similar to the relationship with other international organisations and closely linked to the efforts for reconciliation after the war. Croatia became a member of the CoE in 1996 after having its initial application submitted in 1992 frozen and being imposed specific human rights requirements. Even in this case, there were doubts about the human rights record of the country both in academia and policy circles (See Sadurski, 2009). Similarly, the International Criminal Tribunal for the former Yugoslavia (ICTY) became a key actor, which has been of increasing importance in the process of Croatia’s EU accession. Tudjman was in the same way reluctant to cooperate with the ICTY. In 1999 the ICTY “prosecutor requested the [court] President to find that Croatia had failed to comply with its obligations towards the Tribunal and to report the matter to the Security Council” (ICTY, 1999). Overall, the

⁶⁶ Amendments to Constitution of the Republic of Croatia, Official Gazette No. 135/97 15 December 1997 <http://narodne-novine.nn.hr/clanci/sluzbeni/1998_01_8_121.html> [Accessed 04 May 2010].

first decade of independence of Croatia was marked by difficulty in joining and cooperating with international organisations, including the EU.

In light of this legacy of the first 10 years of independence, the post-2000 period in addition to being a break up with the previous minority policies practice, was characterised by a shift in the relationship with the international organisations, especially the EU. Thus, the first post-2000 government “initiated the processes of rapprochement and integration of the country into the international political and economic organizations and institutions from which it had been barred” (Kasapović, 2004 p.63, See also Zambelli, 2010). “The new narrative was based on the notion that isolation was neither desirable nor viable in the long-term. In order to survive as a state, Croatia must join European institutions” (Jović, 2006). In fact, between 2000 and 2003 Croatia signed the SAA, became a partner of the NATO Partnership for Peace, and in a way was attempting to catch up on the decade in which it was in the foreground of the EU accession processes.

In addition to the standard set of Copenhagen criteria two issues have been burdening Croatia’s relationship with the EU: the cooperation with the ICTY and regional cooperation. The ICTY cooperation was of extreme significance since the negotiations with Croatia were postponed until the cooperation with the tribunal was deemed successful, i.e. with the handing over of war general Ante Gotovina to The Hague. The cooperation with the ICTY has remained one of the most divisive topics in the Croatian society (For an analysis see Zambelli, 2010). This example demonstrates that despite the reconciliation slowly taking place, there is no common stance on the recent history and past (Sadkovich, 2009). In relation to the latter, a border dispute with Slovenia was also a stumbling block in relation to Croatia’s EU accession process. Slovenia in fact blocked the negotiations process between December 2008 and September 2009, when it agreed to resort to international arbitration and decoupled the problem from Croatia’s EU negotiations. It has been argued that the dispute was an “example of instrumentalizing accession negotiations for domestic political goals [...], but led to an almost one-year blockage of accession negotiations with Croatia and consequently postponed its accession” (Lang, 2012 p.501).

4.3 Conclusions

This chapter situated the study in its context in terms of minority policies and involvement of international actors, especially the EU in Macedonia and

Croatia. In terms of the first element of analysis, it examined the evolution of the minority issue since independence in the case studies. While both countries were members of Yugoslav federation and thus had similar formal legacies, the minority issue has developed divergently. On the one hand, the biggest minorities in the newly independent states (Albanians in Macedonia and the Serbs in Croatia) found themselves threatened by the new status in the independent Macedonia and Croatia. Although this similarity is largely shared, the developments in the minority issue had divergent trajectories. Whereas the majority of the Serbs in Croatia excluded themselves from the Croatian governance in the early 1990s, the Albanians in Macedonia participated in the institutions, despite signs of discontent with the new position of a minority. At the same time, in the latter case dissatisfaction with the status persisted and led to a short conflict which transformed the nature of the minority rights regime. In Croatia, the use of force by the state and the massive displacement of the Serb population are the key feature of the minority question since independence.

In both countries the electoral systems were heavily influenced by the minority politics and note an evolution from a majoritarian to a proportional system of government. This shift has generally been considered to support minority participation, although in Croatia this is ensured through the reserved seats in Parliament as well. However, in Macedonia due to the peaceful transformation of the regime as well as the higher number of minority population, ethnic minority parties have been participating in coalition governments since 1990s and generally have a much more powerful position than the case of Croatia. In the latter, ethnic minority parties were members of the coalition governments between 2003 and 2011, but they're not an indispensable part, as is the case in Macedonia.

Lastly, both countries' relationship with the EU was strained in the early 1990s, however due to a variety of reasons. For Macedonia, Greece's objections to the name issue led to a belated establishment of diplomatic relations. The role of Croatia in the Bosnian war and Tudjman's discontent with Europe strained the relations for the entire first decade of Croatian independence, marked by call for sanctions for non-cooperation against Croatia. Since 1997 and especially 2001, their relationship with the EU followed the same path through the regional approach and the signing of the SAAs. At the same time however, in Macedonia the EU gained prominence through its role as a co-signatory of the 2001 OFA. In late 2004 their paths diverge again as Croatia received a recommendation for the

start of the accession negotiation which were launched at the end of 2005 and completed in 2011. In contrast, Macedonia until mid 2013 has not commenced negotiations for EU accession in the last several years because of the name dispute with Greece.

These most important features, similarities and differences between the two cases shape the environment in which the EU has employed its policy of conditionality since 1997 with the Regional Approach. Overall, it must be kept in mind that with the OFA the EU has gained a much more embedded role in national minority policies in Macedonia, than in Croatia. At the same time, due to the stronger organisation of domestic actors in Macedonia, their influence can also be expected to be higher. Lastly, in light of the countries' trajectories on the road to the EU it can be concluded that since 2005, the credibility of the accession of Croatia has been higher than in the case of Macedonia, as will be discussed in chapter six of the dissertation.

Having presented the context, the rest of the thesis is dedicated to an empirical analysis of the application of EU conditionality in relation to minority policies in Macedonia and Croatia. The following three chapters (five, six and seven) deal in detail with the EU conditionality in relation to minority policies in both case studies since 1997. Chapters five and six study horizontally the interactions between the EU and domestic actors in relation to minority policies between 1997 and 2005, i.e. before the accession negotiations with Croatia were launched. Chapter six deals with the post-2005 period, since when Croatia starts the accession negotiations and Macedonia is a candidate state waiting for the launching of the negotiations. Lastly, chapter seven examines in detail the policy of employment in the administration which has become the most prominent element of EU conditionality in relation to minority policies.

5. Conditionality and minority policies: The regional approach (1997-2000) and the early SAA period (2001-2005)

5.1 Introduction

The Regional Approach, launched in 1997 laid the foundations of the relationship between the EU and the Western Balkans region as the beginning of the conditionality towards these countries as a group. In 2001, this instrument was upgraded through the SAP, which represents the basis of the formal contractual relationship between the region and the EU.⁶⁷ This chapter examines the interactions between the EU and the national level with respect to conditionality on minority policies between 1997 and 2005. The analysis focuses on two distinct periods in the EU-Western Balkans relations: the Regional Approach (1997-2000) and the early SAA period (2001-2005).

Studying the period between 1997 and 2005, the chapter examines conditionality and its national responses in the two case studies before they became candidates for EU accession, i.e. until Croatia started the accession negotiations. The timing of the use of political conditionality is of significance as it has an impact upon the incentive structures that operate both in the Union and in the candidate countries. In the Eastern enlargement, political conditionality was mostly enforced when the countries had advanced well in the negotiations process, as was the case with Romania and Bulgaria. Pravda (2001) emphasizes this point in terms of the international position of the states with respect to the EU on a scale of insiders and outsiders. Between 1997 and 2005 Croatia and Macedonia were largely *outsiders*, shifting towards *insiders* in the accession process. Dimitrova and Pridham (2004) have argued that the process of negotiations generally guarantees the fulfilment of the political criteria. However, in the period examined in this chapter, since the two countries were not locked into the negotiations, *there was no increased likelihood* of the fulfilment of the conditions in relation to minority policies. Still, as was pointed in my interviews, “the EU has been in the Balkans before the official negotiations started and this is important as pre-history”.⁶⁸

While touching upon all the research questions, the chapter primarily focuses on how EU conditionality has been implemented through the use of the FCNM and national legislation and the consistency of EU conditionality between

⁶⁷ With the exception of Croatia’s accession treaty.

⁶⁸ Author’s interview with advisor to the President of the Republic of Croatia, Zagreb, 20 May 2011.

1997 and 2005. The chapter is structured in two major sections dealing with the Regional Approach (1997 – 2000) and SAA period (2001-2005). Both sections follow the same structure, as they first present the context of the EU initiative and the literature's findings. The second part of both sections consists of process tracing of the EU documents, national strategic documents and the interview data. Since in the first period the EU's assessments are general, the analysis is also conducted at a macro level. With the increased specification of the EU conditionality since 2001, the analysis is divided in two sections corresponding to the second research question of the thesis, i.e. by focusing on the use of the CoE FCNM as part of EU conditionality and national legislation and agreements in both countries.⁶⁹ The chapter argues that the weak consistency of the use of the FCNM and national legislation as elements of EU conditionality in the period of examination, has constrained the effectiveness of the instrument. Thus, it contributes to illustrating the overall argument of the thesis, while concentrating on the first two research questions elaborated in the introduction.

5.2 1997-2000 Regional Approach

5.2.1 Background on the Regional Approach

As a region, the Western Balkans has been subject to EU conditionality since the mid-1990s through various instruments and policy frameworks, ranging from the Union's foreign policy to the enlargement portfolio. Generally, "there has not been a single policy by the EU towards the region, but rather a number of different policies carried out by a host of different institutions and ad hoc bodies of the EU" (Bieber, 2011b p.1776). In the late 1990s, the EU introduced the regional approach targeting the countries of the region with the purpose of inciting reforms in the political area, such as return of refugees and inter-ethnic reconciliation. In the official terminology of the Council of the EU, the Regional Approach combined the objective of implementing the local peace agreements, as well as advocated political and economic cooperation between the countries in this region (Council, 1997). Although directed towards the regional reconciliation, of which minority rights present an essential element, in the regional approach "no direct references were made to minority rights per se within the country-specific conditions though the need to address majority-minority relations was clearly implied" (Gordon et al., 2008 p.12).

⁶⁹ As already explained, the same structure is used in the next chapter as well. For more on this, see methodology chapter.

The launching of the Regional Approach occurred prior to the entry into force of the Amsterdam treaty, i.e. in a period when the EU engagement in external relations was still nascent (On the early development of the CFSP see Smith, 2003). In 1997, the EU was largely still in the shadow of its failure to deal effectively with the Yugoslav crisis, focusing on the Eastern enlargement and without a political agreement on the Balkans. In this direction, one of my interviewees referred to the Regional Approach as “almost a pre-historic era in terms of EU conditionality”.⁷⁰ In the context of enlargement, the launch of the Regional Approach corresponds with the beginning of the EU’s systematic monitoring of the countries of the Eastern enlargement as the first progress reports on these candidates were introduced precisely in 1997. While the countries of Central and Eastern Europe (CEE) were about to launch negotiations, in the Balkans, however, the political situation and security situation was still highly volatile. For illustration, the late 1990s, Serbia was still under sanctions and the Kosovo conflict was at its peak. Hence, the EU shaped its position in the region through an immediate security threats approach, not looking into deeper use of conditionality.⁷¹ Moreover, “in reality, bilateral relations barely progressed in the post-1997 period and negative conditionality prevailed in the form of limited contractual relations, exclusions from Association Agreements and, in cases like Serbia outright sanctions” (Anastasakis and Bechev, 2003 p.7).

In academic literature, the Regional Approach, has been assessed as inadequate to bring about stability and prosperity among other reasons for not having a “core perspective nor an elaborate strategy” (Fakiolas and Tzifakis, 2008 p.381). This assessment is supported by two main explanations: the “collective” approach and the lack of membership incentive. In relation to the former, the Regional approach was the first form of conditionality for the Western Balkan countries as a group (Gordon et al., 2008). Prior to this strategy, every country had established bilateral relations with the Union following its respective recognition by the EU member states. Moreover, these states were to form a new political category under the heading of the “Western Balkans” (Bartlett and Samardžija, 2000). In fact, “in a situation where there is no shared notion of the region but only various, often contradictory, notions held by the respective regional countries themselves, what constitutes the ‘region’ is frequently defined from the outside” (Delevic, 2007 p.14).

⁷⁰ Author’s interview with think tank analyst, Brussels, 5 October 2010.

⁷¹ Author’s interview with think tank analyst, Brussels, 5 October 2010.

This new reinvention of the region (excluding the candidate countries Bulgaria, Romania and Slovenia) carried negative connotations for all of the countries concerned. Albania and Macedonia were already bound by agreements with the EU and hence “perceived the regional approach as a rather step backwards in their relations with Brussels, [while] Bosnia-Herzegovina and Croatia saw in this EU undertaking an attempt at reconstituting somehow a version of former Yugoslavia” (Fakiolas and Tzifakis, 2008 p.381). These two countries as countries which were not involved in warfare had signed agreements with the EU which contained exceptional conditions in relation to the regional stability, hence the respective governments expected to advance at a quicker pace than the rest of the region (For a detailed analysis of their agreements see Fierro, 2003). As a specific case, Croatia has traditionally since independence resisted accepting any association with the Balkan region or the other Yugoslav successors. According to Vlahutin (2004), “Croatia’s urge to distance itself from the underdeveloped and war-torn region [...] resulted from an assessment that inclusion in the Balkan grouping would necessarily drag Croatia down” (p.22).

In addition to its “collective dimension” the regional approach was also at the time of its launching considered as an inadequate mechanism of conditionality since it did not provide the basic incentive of the prospect of membership. “While refraining from extending the offer of membership, Brussels developed relations with the regional states both on an individual and collective basis” (Anastasakis and Bechev, 2003). Local experts have considered that the EU Regional Approach was vague with limited financial backing and most importantly offered no incentives to these countries to carry forward its main objectives (Uvalic, 2001). This has been a common critique in literature as to more recent periods of EU accession as well, in terms of “a fundamental commitment deficit: without a clear time frame regarding a future EU membership for the countries in the Western Balkans, the prospect of membership remains only an abstract possibility without palpable political implications” (Renner and Trauner, 2009 p.450).

This section has presented the contextual developments and literature’s take on the regional approach as the first monitoring and application of conditionality towards the region. It has presented the main elements of the regional approach, the context of its launching as well as the literature’s findings. Against this background, the following section will present the empirical analysis of the content of the reports on the case study countries in order to establish

whether there is any evident form of a minority policy conditionality developed in the period studied.

5.2.2 Empirical analysis for Regional Approach 1997-2000

Having determined that the Regional Approach has broadly been assessed as a weak tool of EU conditionality, this section examines the European Commission documents for the purposes of studying the consistency of the criteria in relation to minority policies. The analysis is largely based on the European Commission reports because in this period, as the respective governments did not produce extensive strategic documents for EU integration, which is the case in the following two chapters. In the Annex of the 1997 General Affairs Council conclusions, the specific conditions according to which progress in meeting the requirements of the Regional Approach are outlined, including:

i) the right of minorities to establish and maintain their own institutions, organizations or educational, cultural and religious institutions, organisations or associations

ii) Opportunities for these minorities to speak their own language before the courts and public authorities;

iii) Adequate protection of refugees and displaced persons returning to areas where they constitute an ethnic minority (Council, 1997)

In light of these conditions, local experts have concluded that “the Regional approach political conditions basically correspond to the Copenhagen political criteria, but focus more on human rights, and specifically on minority rights” (Jordanova, 2006 p.8).

Between 1997 and 2000, the European Commission published five reports on the progress of each of the countries of the region in meeting the conditions of the regional approach.⁷² “The Regional approach was similarly based on periodic assessments – but very general ones examining whether the governments of Bosnia-Herzegovina, Croatia, the FRY, Macedonia, and Albania were respecting basic Western standards of democracy and human rights” (Vachudova, 2003 p.147). A close examination of the European Commission documents in this period shows that in relation to minority policies there is increased repetition of the EU assessments. The copying of the same remarks and lack of specific assessments or conditions that need to be fulfilled was also confirmed in the

⁷² Two reports were published in 1997 and one per year in 1998, 1999 and 2000.

interviews. In this direction, it was highlighted that “the repetition of the remarks in the reports from this period was a result of the still distant relationship between the EU and the region”.⁷³ One of my interlocutors in Macedonia highlighted that “although one would expect the minority issue to be high on the agenda before 2001, the assessments in this period were not negative and had no specific benchmarks, especially if one examines the reports of 1998 and 1999”.⁷⁴

In terms of topics, the Commission in this period deals with a variety of issues linked to institutional and legislative aspects of minority policies, ranging from use of languages, education to formal mechanisms for cooperation between majority and minority groups. Furthermore, the careful reading of the European Commission documents highlights that there are no benchmarks or recommendations put forward, in addition to the repetition of the European Commission remarks and the evident non-responsiveness at the national level. The analysis therefore confirms the findings on the previous enlargements which have argued that “the first reports of the European Commission on the candidate countries lack a clear methodology on the political conditionality for objective cross-country comparisons between states, which explains the general assessment that the countries fulfill the Copenhagen criteria”(Pridham, 2002a).

The European Commission reports on Macedonia are essentially characterised by reiteration of the remarks and lack of continuous follow up on an annual basis. There is substantial difference between the reports of the first two years (1997-1998) as opposed to 1999 and 2000. In the former, the Commission dealt with policy and institutional aspects of minority policies, whereas in the latter period it assesses the relationships between the political parties and inter-ethnic relations. For example, in the three consecutive reports between 1997 and 1998, the Commission criticizes the lack of operation of the Parliament appointed Council of Inter-Ethnic Relations (EC, 1997b, 1998b, 1998a). Though repeated in the all three reports, this remark is not followed up in the subsequent reports of 1999 and 2000, putting into question the consistent application of conditionality. Lack of follow up is also noticeable in relation to other policies like use of language and education. In 1997 and 1998 the Commission notes that “a key minority issue is access to Albanian language education and, despite some

⁷³ Author’s interview with former vice prime minister for EU affairs, Skopje, 23 December 2010.

⁷⁴ Author’s interview with senior civil servant in the Secretariat for European Affairs, Skopje, 22 December 2010.

progress. the school system is still faced with serious difficulties due to limited resources, in particular shortages of secondary school teachers for Albanian language education” (EC, 1997b p.4, see also, 1998b). Similarly as with the Council of Inter-ethnic relations, this remark is also not followed up in the last two reports of 1999 and 2000.

Whereas in the first two years the European Commission deals with the policy and institutional aspects of minority policies, in 1999 and 2000 it changed its focus and concentrated on assessing the work and *political will* of the Government and coalition partners. Thus, in the 2000 report, the European Commission changes its focus and deals with the inter-coalition relations between the Governmental partners, without follow up on the remarks and recommendations from previous years. Pridham (2002b), noted this tendency by arguing that “the EU has moved resolutely down the path of high as well as low politics and, thereby, into areas traditionally regarded as internal to states” (p.203). Similarly, one can relate this shift to the evolving role of the EU as an actor in the case of Macedonia, discussed in chapter three (See Noutcheva et al., 2004). Moreover, the European Commission in the same year comments on the “open attitude” and “pragmatism” of the Government towards ethnic minorities, without a follow up on the policy level which was the case between 1997 and 1998. Hence, between 1997 and 2000 it is evident that there are two distinct approaches with respect to Macedonia which are to be identified in the EU documents. In the first two years, the European Commission deals with policy level conditions which are not followed up in 1999 and 2000, when the reports deal with the relations between the political actors.

In its monitoring of Croatia between 1997 and 2000, the European Commission focuses on the role of the Serb and Italian minority and the topics of language and return of refugees with numerous reiterations on the lack of progress from year to year. In the first report of 1997 the Commission states that most [minorities] do not experience major problems, at the same time highlighting the problems of refugee return (EC, 1997a). This assessment was surprising because only two years previously, in 1995 the expulsion “of ethnic Serbs [...] set Croatia off track, after which the country was removed from PHARE and cooperation negotiations were halted” (Fisher, 2006 p.191). In addition, in 1996-1997 due to insufficient cooperation on human rights and failure to facilitate the return of Serbian refugees Croatia had severed its relations with the CoE and the US (See Smoljan, 2003). In these circumstances at the time, the European

Commission assessment that minorities do not experience major problems is problematic and puts into question the viability of conditionality as expressed in the EU documents.

On a legislative level, in Croatia the Commission focuses on the Minority language act and the Law on the use of minority languages in education (EC, 1998a, 1999).⁷⁵ However, the reports only mention the suspension of provisions of the Constitutional Law on Human Rights and the Rights of National Minorities in 1999, without going into detail of the impact of these suspensions, although they have been considered in literature to be highly discriminatory against the national minorities (See Petričušić and Žagar, 2007). The recommendation to adopt a new Constitutional Law on the Rights of National Minorities, which was a long-term obligation for Croatia's CoE membership is for the first time mentioned in the 1999 report and is then repeated as an obligation which was not fulfilled in 2000 (EC, 1999, 2000). The 2000 report as the last one of the Regional Approach, solely states that "none of the expected modifications of the legislative framework for the protection of minority rights has been finalised, notably the revision of the Constitutional Law on Human Rights and the Rights of Minorities" (EC, 2000 p.11). Hence, for Croatia the Commission fleetingly addresses minority issues with a repetition of the failure to adopt minority related legislation. As an explanation of the Commission's fleeting references to minority policies, an interviewee with extensive experience in Croatia highlighted that "at the time the Commission did not have the capacity to monitor all of the aspects of minority issues".⁷⁶

The government response to the EU recommendations in Croatia was equally inconsistent. The Government already in 1999 adopted the First Action Plan for European Integration which does not foresee any substantial activities on the minorities issue besides mentioning the on-going revision of the Constitutional Law without undertaking any further obligations (Government of the Republic of Croatia, 1999). This approach was largely confirmed by my interviewees who have argued that the "Government at the time was much more closed for discussion of minority issues".⁷⁷ This response is not surprising having in

⁷⁵ These laws were adopted upon the change of Government in 2000, after 6 years in parliamentary procedure and published in the Official Gazette 51/00.

⁷⁶ Author's interview with UN representative, former OSCE representative, Zagreb, 07 June 2011.

⁷⁷ Author's interview with UN representative, former OSCE representative, Zagreb, 07 June 2011.

mind that the largely nationalistic Tudjman regime was still ruling Croatia, as explained in the previous chapter. Similarly, Vachudova (2003) has argued that the compliance with the conditions for association with EU of Croatia was selective. As a result, in April 1998 “the Council stated that it was even considering removing Croatia from the autonomous trade preferences regulation at next review” (Cremona, 1999 p.487)

Overall in the period of the Regional Approach, the European Commission has fleetingly and selectively highlighted minority issues in each of the countries studies at different points in time. Even though the Conclusions of the General Council put forward specific conditions according to which the progress of the countries would be measured, these were not followed up in their European Commission Reports. First, there was no consistent approach on the issues addressed in both countries, or within one country chronologically. Second, there was no attempt to go beyond the legislative/institutional dimensions of minority policy and the assessments are repeated from one year to another. In terms of country differences, in reference to Macedonia, the Commission in the 1997-1998 deals with various aspects of policy and legislation, whereas in the two subsequent years, it assesses the political developments and the relations between the Government partners. In Croatia, on the other hand, there is a constant focus on the lack of progress in adopting legislation, more specifically the CLNM. The analysis therefore largely confirms the findings of the literature on the largely blurred and unsuccessful role of the regional approach, which was upgraded with the SAP, discussed in the following section.

5.3 2001-2005 period: From SAA signatories to candidates

This section examines the interactions between the EU and national governments in the period since the signing of the SAAs in 2001 until the granting of a candidate status in 2004/2005. As in the preceding analysis, it first provides a short introduction into the SAA process elaborating on its multifaceted nature, its background and literature findings for setting of the context for the empirical assessment that follows. The latter empirical section uses process tracing to examine the consistency and application of EU conditionality in relation to minority policies and is divided in two main parts. The first one examines the use of the FCNM as a benchmark in minority policies, whereas the second examines the consistency in the use of national legislation as a benchmarking tool for minority policies. The time span of the analysis corresponds to the period when

the European Commission issued the SAP Reports on the countries of the Western Balkans which are substantially less detailed than the subsequent Progress Reports introduced in 2005.

5.3.1 Background on the Stabilisation and Association Process

The launching of the SAP followed the largely recognised failure of the Regional Approach examined in the previous section. The SAP consists of three main instruments in supporting the countries from the Western Balkans to advance their development path towards membership: the SAA, the autonomous trade measures and substantial financial assistance. As a legal document, the SAA does not contain a suspension clause, but links the provision of assistance under the Community Assistance for reconstruction, development and stabilisation (CARDS) to the priorities set by the Commission, including democratic stabilisation, strengthening civil society and the media, protecting minority rights and good governance (Börzel and Risse, 2004). The SAAs represent the core formal contractual relationships between the countries of the Western Balkans and the EU and as such have established the main bodies of communication between the EU and the candidate countries. These include the annual meetings of the Stabilisation and Association Council, the Committee and the thematic sub-committees at which various topics related to the respective country's accession process were discussed.

Macedonia and Croatia were the first signatories of the SAA in the Western Balkans region. Macedonia signed the SAA Agreement in February 2001 in peculiar circumstances as the country was in the midst of an armed conflict, as explained in chapter three of the thesis. Academic research has argued that "Macedonia was offered a SAA as a political reward for support given to the West during the Kosovo war, [while] Croatia was next to sign the agreement as a reward for the formation of a new government following the death of Tudjman" (Anastasakis and Bechev, 2003 p.7). During the war in Kosovo, almost 350 000 refugees arrived in Macedonia and were hosted in a period of nine weeks, although the numbers still remain controversial (See Barutciski and Suhrke, 2001). Fierro (2003) has maintained that the quick negotiation of the agreement with Macedonia was a result of its significance for regional stability in general. Similarly, Trauner (2011) pointed that "the link between conflict resolution and the reward of signing the SAA hence provided the EU with powerful external leverage at a crucial moment" (p.146).

Croatia's signing of the SAA in October 2001 was considered as a beginning of the political liberalisation following the largely authoritarian rule of former President Franjo Tudjman.⁷⁸ In fact, in the aftermath of the Presidential and Parliamentary elections of 2000 the relations between Croatia and the EU improved dramatically (Cremona, 1999 p.487). Similarly, research on minority policies and especially minority return has singled out the year 2000 as a major turning point in this policy area (Djuric, 2010). Still this period of shifting policies was not completely smooth because due to the refusal of the SDP government to transfer an army general to the ICTY led to suspension of the SAA ratification by the British and Dutch Parliaments (See Fisher, 2006).

In an attempt to address some of the identified problems of the Regional approach, the main novelty of the SAA was the consideration of the countries of the Western Balkans as potential candidates for accession. The "potential" candidates status was a result of EU negotiations between Germany and France in the first half of 2000 under the German presidency of the EU, as illustrated by Friis and Murphy (2000). The perspective for membership for these countries was also confirmed in June and November 2000 at the Feira and Zagreb European Councils (European Council, 2000b, 2000a), however, until 2004 these countries were still subject to monitoring solely in relation to their SAA obligations and were in the portfolio of DG for External Relations.⁷⁹ As a result, governments in the region have regarded the conditions in the SAA as a way of deferring membership (Anastasakis and Bechev, 2003). In this vein, it has been argued that "the SAP was not as elaborate and geared to EU accession as the Accession Partnerships for the CEE candidate countries" (Vlahutin, 2004 p.26). Although at the EU level there was an expectation that once the SAA was implemented, the country would be in a position to apply for a candidate status, this did not materialise. Both Macedonia and Croatia applied for membership already in 2003/2004, indicating the dissatisfaction with the state of play as potential candidate countries, seeking to be "upgraded" to candidates for accession (see Vlahutin, 2004). The reception of their applications was not positive and both of them were actively discouraged from this step (On Croatia see Fisher, 2006 p.194). For Macedonia, an interviewee

⁷⁸ See section on context in Croatia in chapter four.

⁷⁹ The transfer of these countries to the DG Enlargement will be discussed in the following chapter as this period is specifically examined there.

described the application for membership as “an almost impossible mission, having in mind the cold informal reception from the EU officials”.⁸⁰

In light of these complexities, academic literature has considered the SAA as a hybrid process, having in mind that it is based on the principles of the Eastern enlargement while at the same time attempting to address the post-conflict societies of this region (Gordon, 2009). In essence, the policy consisted of both assisting post-conflict reconstruction and in building future EU member states (Bieber, 2011b). The research on the success and perspective of the SAA as an instrument has brought about different conclusions. On the one hand, it has been recognized that the SAP was “as a shift from an ad hoc ‘fire-fighting’ style of crisis management to a more long-term broadly integrationist approach to the WB region” (Gordon et al., 2008 p.3). At the same time, due to its multifaceted nature, Elbasani (2008) has maintained that “the EU enlargement framework in the Balkans is less clear than in the previous example of CEE in terms of the overloaded and rather conflicting agenda combining stabilization and association” (p.2). Similarly, Fierro (2003) has argued that whereas in the Eastern enlargement conditionality “serves the purpose of bringing these countries on the track for accession to the EU, in the case of Southeastern Europe, conditionality is used as a tool for bringing durable peace and stability to the region” (p.133).

While research on the general role of the SAA in terms of the combination of both building member states and peace and post-conflict reconstruction has appeared (Chandler, 2007), the analysis specifically of minority rights in the EU accession process has been mostly limited to expert opinions and CSO studies (See Bokulić and Kostadinova, 2008, Gordon et al., 2008). In general, the work of Gordon et al has already hinted at the internal inconsistencies in the policy at the European level in relation to minorities (Gordon et al., 2008). This section therefore builds upon and extends this research on the SAA process and minorities primarily by bringing insight from national documents for European integration and the data from the interviews with stakeholders. It looks closely into the EU progress reports from this period and the national strategic documents in order to examine if there is consistency and clear causality in the relationship between the EU conditions and the developments in national minority policies between 2001 and 2005.

⁸⁰ Author’s interview with senior civil servant in the Secretariat for European Affairs, Skopje, 22 December 2010..

5.3.2 Empirical analysis – conditionality and national minority policies between 2001 and 2005

This section presents the empirical analysis of the minority related conditionality between 2001 and 2005. In this period the European Commission published three SAA reports in 2002, 2003 and 2004. These documents, as explained in the methodology section, serve both for stipulating and monitoring of the realisation of EU conditionality. In addition, in 2003/2004 the European Commission sent questionnaires on the applications for membership to both countries. In 2004, the Commission Opinion on the application of Croatia for membership was published. A year later, the corresponding document on Macedonia was also prepared by the Commission, upon receiving the country's application for membership. These documents served as main sources of conditionality in relation to minority policies, since, as was argued by my interviewees "there was no further guidance in this policy area".⁸¹ In this period the countries started preparing elaborate documents for EU accession at the national level. Hence, in 2001 the governments in both countries prepared their plans for implementation of the SAAs and submitted reports on their implementation on a yearly basis. This section therefore presents a process tracing analysis of this "dialogue of documents" between the EU and national governments and links these findings with the interview data. The objective is to trace if the European Commission has consistently used and applied conditionality in relation to minority policies, whether these conditions were accepted from the national level in the strategic documents and through the interviews with stakeholders.

The structure of the section was determined by document analysis and interview data, which have pointed to two major ways in which the European Commission has addressed minority policies in its documents, reflected in the second research question of the dissertation. First, similarly as in the previous enlargement, it used references to the FCNM and second, it monitored the adoption and implementation of domestic legislation and agreements. In fact, most of my interviewees when asked about the main sources of EU conditionality highlighted that the EU uses references to international instruments, most notably the FCNM and also monitors various aspects of the implementation of domestic policies in relation to minorities. In the latter case, the EU was "relying

⁸¹ Author's interview with European Commission official, Skopje 21 January 2011.

on domestic rules and agreements [which] is advantageous as it enables the EU institutions to focus their policy on the specific local situation, but it risks that the parameters of the situation determine the standards [...] underlying EU policies” (Brusis, 2003 p.4). In line with the focus of the European Commission, this section examines whether there was consistent use of the FCNM and references to national legislation as elements of EU conditionality in the two countries between 2001 and 2005.

The FCNM as an element of EU conditionality

As already explained in the introduction, due to the lack of common standards on minority policies, research has adopted a context-specific approach in relation to the countries in question. In the Eastern enlargement, conditionality in relation to the minorities was mostly focused on the adoption of non-discrimination directives, the FCNM and governmental strategies targeting the Roma (Rechel, 2008). Sasse in her research argues that “over time the FCNM of 1995 became the Commission’s primary instrument for translating the minority criterion into practice” (Sasse, 2005 p.5). As a result of its importance, studies on EU enlargement have stressed the need for a shift “towards a somewhat more formal incorporation of the Council of Europe [i.e. FCNM] monitoring system within the EU pre-accession” (Kochenov, 2006 p.341). Recent research, however has highlighted that “despite the fact that the FCNM [...] aspired to create a common standard, this standard was selectively applied by the EU towards the reforming states of Eastern Europe” (Koinova, 2011 p.811).

The main legal document which determines the relations between the EU on the one hand and the case studies in this period and in Macedonia’s case until today, is the SAA itself. Specifically in relation to minority rights, Gordon et al have underlined that although the Communication on the SAA “acknowledged the importance of human and minority rights [...] , there was no further mention of this dimension in its early exposition of the six main elements of the SAP let alone in the country specific conclusions” (Gordon et al., 2008 p.13). The SAA solely recalls the need for respect of minority rights in principle and does not stipulate any specific obligations. The criteria for the assessment of compliance with the Regional Approach provided in the Annex conclusions of 1997, examined in the previous section were not incorporated formally in the SAA. Gordon et al highlight that “as the regional approach was incorporated into the broader and multifaceted Stability and Association process, the actual place of minority rights

was to become diluted (Gordon et al., 2008 p.13). Kochenov (2004) has made a similar remark in relation to the progress reports of the Eastern enlargement arguing that, “despite the Commission’s rhetoric concerning the ‘absolute priority’ and importance of the political criteria, a record-low space in the progress reports is reserved for the political criteria analysis” (p.9).

On the national level, in 2001 both countries prepared their Implementation Plans for the SAA stipulating activities to be undertaken in the upcoming several years. In Macedonia, the main strategic document which outlines the activities for this period is the Action Plan for implementation of the SAA and the matrix for monitoring its implementation (Government of the Republic of Macedonia, 2001). The Action Plan, being prepared in response to the SAA obligations, did not incorporate the topic of minority policies. In fact, while recognising the need for respect of minority rights; the plan does not foresee any specific activities in this policy area. In relation to chapter VII which refers to Justice and Home Affairs it puts forward the following broadly defined activity:

Upgrading of domestic legislation in the function of reinforcement of institutions and rule of law, in the context of implementation process of the domestic legislation of the “Programme for Approximation of the National Legislation to the Legislation of EU”, including continuous active implementation of ratified international documents, as well as acceding and/or ratification of EU, Council of Europe and UN conventions, which are directly concerned with future reinforcement of institutions and rule of law (Government of the Republic of Macedonia, 2001).

Even if interpreted widely, it is evident that the 2001 SAA Action Plan primarily establishes legislative activities with no specific mention of minority policies. Similarly, the Croatian Initial implementation Plan of the SAA does not contain any reference to the FCNM (See Government of the Republic of Croatia, 2001a).

As of 2002, the European Commission began publishing annual reports on the progress of all the countries included in the SAP. These documents are not as detailed as the regular Progress Reports but contain references to all the elements of the political criteria, including minority policies. In the 2002 report on Macedonia the European Commission considers that “despite formal protection of minority rights [...] and the ratification of the “Framework Convention for the Protection of National Minorities” in 1997, the enforcement of minority rights is a major problem in the country, greatly contributing to the current inter-ethnic crisis” (EC, 2002). This assessment is to be expected especially having in mind that

in the previous year the country was torn by an inter-ethnic conflict, which ended with the signing of the OFA, as explained in the previous chapter. However, the European Commission does not recommend measures which need to be undertaken for the improvement of the situation, nor does it stipulate any benchmarks.

In June 2003, the Macedonian government prepared an Action Plan for the implementation of the recommendations of the 2003 SAA Report, a detailed document outlining activities specifically directed towards the fulfilment of EU conditions (Government of the Republic of Macedonia, 2003a). With respect to minority policies, the Action Plan sets out detailed activities for the implementation of the OFA mostly directed towards legislative changes and reconstruction of buildings damaged in the conflict. The Plan does not mention the FCNM or any other international reference. In November 2003, the Government prepared a Report on the realisation of this Action Plan which provides detailed information on what was implemented in the six months period (Government of the Republic of Macedonia, 2003b). This document provides detailed information on the legislative activities undertaken and mentions the submission of the Initial Report of the country on the implementation of the FCNM. However, the reference to the FCNM is sporadic and is not linked to any planned activity in relation to fulfilling EU conditionality.

Whereas in the documents on Macedonia the European Commission fleetingly mentions the FCNM, it does not make any reference to this instrument in relation to Croatia. The lack of reference to the FCNM is surprising as the Advisory Committee on the FCNM published a report on Croatia in 2001 with a detailed analysis of on-the-ground the situation, highlighting the need for adoption of the new Constitutional law on national minorities (CoE, 2001). Nevertheless, the European Commission did not use this document to back up its recommendations for the adoption of a new CLNM in Croatia. Similarly, in the 2003 SAA report on Croatia or the first European Partnership of 2004 there is no mention of the FCNM (EC, 2003a, Council, 2004). Since the national documents for EU accession are in essence responses to the EU requirements and recommendations, the FCNM is also not mentioned in the official documents of the Croatian government, such as the 2002 report on the implementation of the SAA (Government of the Republic of Croatia, 2002). Hence, the European Commission does not use the FCNM as a reference with respect to Croatia, in contrast to the fleeting references with respect to Macedonia elaborated above

highlighting the lack of consistency in the use of the FCNM in the EU accession process noted by literature (Kochenov, 2006).

At the same time, the interviews in Croatia provided a more nuanced overview of the use of the FCNM in the EU accession in this period. In Croatia specifically, national officials responsible for implementing the EU recommendations into policies in Croatia highlighted that “the conditions stipulated would have been strengthened with the more extensive use of the FCNM, which the European Commission did not employ”.⁸² Similar arguments have been put forward in academic literature arguing that “the system of standards employed by the CoE during its monitoring is much better articulated than that of the EU” (Kochenov, 2006 p.341). This use of the FCNM, however, is not reflected in the EU documents as such. On this note, an interviewee reflected on the changed circumstances “since 2000 when the primary international interlocutor on minority issues was the CoE and not the EU”.⁸³ As a result, CSO representatives pointed that in this period “there was a lot of use of the FCNM by the EU officials, which is not the case today when the EU officials are attempting to set standards”.⁸⁴ These remarks largely confirmed the process-based definition of a formal and informal dimension of conditionality, as well as its changes over time.

In 2004, the last SAA Report for Macedonia was issued, in which the European Commission started using the term “European standards” and fleeting references to FCNM in relation to minority rights (For more on European standards see Kymlicka, 2006). Thus, the European Commission underlined the need for “efforts to be made to fully apply European standards, such as the implementation of the FCNM of the Council of Europe, [which] would help to build further confidence and sense of loyalty to the State” (EC, 2004a). Sasse highlighted in her work that this was a legacy of the eastern enlargement, since phrases such as international or European standards were used in this case (Sasse, 2005 p.7). However, the use of the term ‘standards’ in itself is criticized in literature, since these are never specified (Hughes and Sasse, 2003). Kymlicka, further criticizes these new rules, since “states can fully respect these new

⁸² Author’s interview with senior civil servant in the Ministry of Foreign Affairs, Zagreb, 2 June 2011.

⁸³ Author’s interview with Croatian Ministry of foreign affairs official, Brussels, 10 November 2010.

⁸⁴ Author’s interview with CSO representative, Zagreb, 19 April 2011.

standards and yet centralise power in such a way that all decisions are made in forums controlled by the dominant national group” (Kymlicka, 2006).

The use of the term “European standards” which as of this period is common in later years has been substantially criticized by all of my interlocutors. Most importantly, the officials working on minority issues in relation to EU affairs commonly noted that the term “European standards” was used whereas there was no common understanding of what it entailed.⁸⁵ Similarly, it was also argued that the term “European standards” conveys an impression that there are established standards in relation to minority policies at the EU level, which is not the case.⁸⁶ In this sense, the stakeholders both at EU and national level considered the use of these terms more confusing than helpful. For example, a Commission official explained that “in many cases the term is used without clear meaning behind it”.⁸⁷ A national official at the other end of the conditionality spectrum also did not see the use of the term as beneficial, because of the “evident contradictions between the policies of the various member states”.⁸⁸

The last formal exercise in the period under analysis in both countries was the European Commission “questionnaire” for both countries in relation to their applications for membership and the submission of the answers by the respective governments. The Croatian and Macedonian questionnaires as indicated by my interviewees were very similar and contained detailed questions and answers from the respective governments on the minority policies and their implementation (For the Macedonian answers to the questionnaire see 2005). The objective of this exercise was to determine the *factual* situation in relation to the minorities demanding detailed information on current policies. Following the submission of the answers to the questionnaire by Croatia and Macedonia, the European Commission published the Opinions recommending that they become candidate countries, in 2004 and 2005 respectively. In the 2004 Opinion on Croatia the Commission for the first time refers to the FCNM, by underlining that “the principles of equality and non-discrimination [...] appear to be incorporated in the Croatian legislation [and that] these principles are consistent with the basic

⁸⁵ Author’s interview with civil servant in the Ministry of Labour and Social Policy, Skopje, 28 February 2011.

⁸⁶ Author’s interview with Macedonian diplomat, Brussels, 19 October 2010; Author’s interview with CSO representative, Zagreb, 16 June 2011.

⁸⁷ Author’s interview with European Commission official, Brussels, 8 October 2010.

⁸⁸ Author’s interview with civil servant in the Ministry of justice, Skopje, 18 January 2011.

principles of the FCNM and the European Charter for Regional and Minority languages” (EC, 2004b). Similarly, Letschert in her research has argued that the European Commission did not refer to the Opinion of the Advisory Committee of the FCNM, nor advised its experts in the preparation of this document (Letschert, 2005 p.411). The ratification of the FCNM by Macedonia is noted in the 2005 Analytical report though it is not used as a specific benchmark, nor it is further developed (EC, 2005a).

Overall, in relation to the document analysis of the SAA reports two distinct conclusions can be drawn. First, the European Commission fleetingly uses the FCNM as a reference in relation to minority policies and this is also reflected in the national documents, which contain no substantial references to the FCNM. Second, whereas the European Commission uses the FCNM in reference to Macedonia since 2002, the FCNM is referred only in the Opinion on the application for membership of Croatia in 2004. Hence, from the document analysis it is difficult to trace consistency in the use of the FCNM as a benchmark in relation to minority policies between 2001 and 2004. The interview data indicate that the FCNM was referenced and used more as a benchmark in the discussions between the European Commission and national level stakeholders than is the case in the formal EU documents. However, the differences between and within groups of interviewees on the role of the FCNM in the EU accession process puts its usefulness as a benchmark to question. In this sense, the distinct understandings of the role of the FCNM between the Commission representative in Brussels and the EU delegations in the candidate countries shed light on the non-homogenous role of the Commission as an actor in the application of conditionality. Furthermore, while all stakeholders agreed on the potential of the FCNM as a source of benchmarking in the area of minority policies, it was argued that this has not materialised in practice having in mind the fleeting references to the Convention and its absence from the accession negotiations.

National legislation as part of EU conditionality in relation to minority policies

In addition to relying on international instruments (i.e. the FCNM) discussed in the previous section, when dealing with minority policies, the European Commission has also supported amendments or implementation of existing legislation in the candidate countries. The primary objective the European Commission supported in Macedonia in the period under analysis was the implementation of the OFA. The implementation of the Agreement necessitated

numerous constitutional, legislative and institutional changes directed towards accommodating the communities living in the country.⁸⁹ From this perspective, it can be expected for the EU in its documents to have clear benchmarks and assessments for its implementation. However, the document analysis indicates that this is not the case, since in the first report of 2002 the Commission notes the amendment of the constitution to increase the protection of minority rights, but does not provide any further elaboration (EC, 2002). The Commission also noted that “it is expected that the implementation of the Framework Agreement of August 2001 will provide a higher degree of protection for persons belonging to minority communities” (EC, 2002 p.11).

In the 2003 SAA report, there is no follow up on the policy related activities from the previous year, but instead the European Commission deals with the interethnic relations between the communities (EC, 2003b). In this document the European Commission recognises that “the interethnic relations have undeniably improved since the crisis” and recommends that “further measures to build confidence and promote dialogue between communities will be vital to support the on-going political process and reinforce the de facto cooperation which often, at local level, allows daily public affairs to be conducted” (EC, 2003b p.10). This assessment can be expected, since in the immediate aftermath of the signing of the 2001 OFA most of the energy at the state level was channelled towards the legislative reforms foreseen with this Agreement. Thus, in 2003 the European Commission notes the positive developments but also provides broad recommendations in relation to institutional developments such as the need for the “Parliamentary Committee on Relations between the Communities [...] to play an important role in preventing or resolving inter-communities issues” (EC, 2003b p.9). The operationalisation of this recommendation is nowhere to be found in the documents further indicating the lack of consistency and follow up, similarly as in the previous section.

The lack of formal follow up however in this period was accompanied by increasing on-the-ground involvement of the EU through its first EU military peacekeeping mission Concordia deployed in Macedonia, reinforcing the role of the EU as an active player in conflict prevention. The ensuing EU police mission Proxima was deployed in April 2003 and was described by EU officials as “an instrument in the cooperation between Macedonia and EU which needs to be

⁸⁹ See background on the Ohrid Framework Agreement in the fourth chapter dealing with the context in both countries.

used to meet the objective of membership in the Union” (Solana, 2003). National stakeholders underlined that “the EU had a major role on the ground with their police missions and as far as the major policies are concerned”.⁹⁰ The high involvement of the EU on the ground has also been reflected in the ‘double hat’ representation of the EU in the country combining the position of the EU Special Representative of the Council and the Head of the Commission Delegation. “Due to this double hat policy, the political functions of the Council have been performed by the same representative managing issues of EU enlargement, further strengthening the link between the two”.⁹¹ As a result, EU representatives in Macedonia have become intrinsically connected with the domestic politics, which is demonstrated in the role they have played in managing crises between the major political actors in the country in the following chapter.

In 2003, the Macedonian Government adopted a Plan for implementation of the recommendations of the SAA Report of the same year (Government of the Republic of Macedonia, 2003a). Having in mind that the SAA Report of the same year does not stipulate precise benchmarks and targets, with respect to minority policies, this plan makes general references to maintaining “regular dialogue within the coalition government” and “between political parties represented in the Parliament”, i.e. activities without potential of meaningful monitoring (Government of the Republic of Macedonia, 2003a). An interviewee explained this “as a tendency by minimising the obligations undertaken for the purposes of the EU accession, since with vague activities there are no indicators of implementation”.⁹² The only substantial obligation undertaken by the Government is the adoption of a programme for equitable representation of the communities in the public administration and public enterprises, a topic discussed separately in the last empirical chapter of this thesis. This activity is followed up in the 2004 SAA report with the European Commission underlining that the stipulated targets have not been met, underlining the need for increased efforts from the authorities (EC, 2004a). On this point, the Commission is the most direct and elaborate, suggesting also increased budgetary allocations, training and changes in the regulations affecting the employment in the public sector.

⁹⁰ Author’s interview with former Vice Prime Minister for EU Affairs, Skopje 23 December 2010.

⁹¹ Author’s interview with think tank analyst, Brussels, 11 October 2010.

⁹² Author’s interview with senior civil servant in the Secretariat for European Affairs, Skopje, 22 December 2010.

The use of “national legislation” as a tool of benchmarking in the EU accession process was confirmed by all stakeholders as a way of tackling dealing with the lack of a unified policy or benchmarks in this policy area. In Macedonia, all of the groups of stakeholders were unequivocal about the significance of the OFA for the EU accession process. Furthermore, it was highlighted that “because of the specificity of this political agreement based on minority rights, also streamlined into the Constitution, the EU’s focus on the minorities is much bigger”.⁹³ Commission officials in general regarded the implementation of the OFA as unequivocal condition with respect to minority policies. On several occasions my interlocutors stated that “in Macedonia before 2004/2005 minority policies were exclusively linked to the implementation of the OFA”.⁹⁴ A national official in Macedonia working on the EU accession process described this in the following way: “the changes in Macedonia were a result of the domestic political actors, however, this was put in a document [OFA] which was used as a benchmark from the EU for us at a later stage – to remind the authorities of the need to adopt or amend certain laws or their implementation”.⁹⁵

Still, despite this general acceptance of the OFA as a condition, the interviews with stakeholders illustrated that there were major disagreements once specific policies were on the agenda. First, doubts were expressed on the usefulness of the stipulated recommendations as they were not unified at the EU level and the need for more definite benchmarking. In this respect, “in the early 2000s it was possible for the European Commission to put forward the implementation of the OFA as a condition, however, in the later years there was need for more definite benchmarking, which was missing”.⁹⁶ This problem has been highlighted in literature by contrasting the Commission’s checklist approach with the vagueness of the political criteria in general (Haukenes and Freyberg-Inan, 2012). In the words of one of my interlocutors “we [meaning the civil service] as a bureaucracy expect to receive concrete tasks which we will then easily translate into obligations and to give feedback to the EU”.⁹⁷ Hence, while

⁹³ Author’s interview with Macedonian diplomat, Brussels, 19 October 2010.

⁹⁴ Author’s interview with former vice prime minister for EU affairs, Skopje, 23 December 2010. Same was confirmed by Author’s interview with senior civil servant in the Secretariat for European Affairs, Skopje, 22 December 2010.

⁹⁵ Author’s interview with civil servant in the Ministry of justice, Skopje, 18 January 2011.

⁹⁶ Author’s interview with former vice prime minister for EU affairs, Skopje, 23 December 2010.

⁹⁷ Author’s interview with Macedonian diplomat, Brussels, 19 October 2010.

accepting the OFA as a national obligation and EU condition, constant remarks were made about the lack of definite benchmarks and consistency, which are ever more prevalent in the post-2005 period discussed in the following chapter.

While the OFA was the primary document on minority policies in Macedonia, in Croatia in the period under analysis in this chapter corresponds to the timing of the negotiations for adoption and early implementation of the 2002 CLNM. In October 2001, immediately following the signing of the SAA in 2001, the Croatian government prepared the first plan for the implementation of this Agreement. The most important activity foreseen in relation to minority policies was the adoption of the new Constitutional Law on human rights and freedoms and the rights of ethnic communities and minorities in the Republic of Croatia, which was planned for December 2001 (Government of the Republic of Croatia, 2001a). Having in mind that the implementation plan was prepared in October, the potential adoption of this law in two months was not realistic since this piece of legislation was already substantially delayed. In light of the adoption of this law, it is important to have in mind that “the legislation previously governing the protection of minority rights was politically an extremely controversial and much-discussed law, and was amended and suspended quite a number of times in its existence of just over ten years” (Petričušić, 2002 p.607). Hence, it is not surprising that in the Croatian Government report on the realised activities for 2001, the adoption of this most important piece of legislation was moved for mid-2002 (Government of the Republic of Croatia, 2001b).⁹⁸ Lastly, an interviewee highlighted that “the final adoption of this Law in November 2002 was a result of the pending ratification of the SAA”, illustrating the role of EU conditionality in relation to formal legislative change.⁹⁹

In the 2003 SAA report, the Commission criticizes the CLNM adoption as overdue since November 1996 and Croatia’s accession to the CoE (EC, 2003b). In this context, both the Venice Commission and the Advisory Committee on the Framework Convention of National Minorities since 2001 recommended the adoption of a Constitutional law on the rights of national minorities in order to remedy the minority situation in the country with specific reference to the position of the Serbian minority (Venice Commission, 2001, CoE, 2001).An

⁹⁸ This approach in delaying the undertaken obligations will be further elaborated in the next chapter, since it will examine the more detailed strategic documents for EU accession which were developed by the candidate countries at a later stage.

⁹⁹ Author’s interview with CSO representative, Zagreb, 5 May 2011

interlocutor at the national level pointed that “the CoE foremost through the Venice Commission provided external assistance during the adoption of this law, however did not have an implementation role”.¹⁰⁰ The role of the EU was illustrated as a “highly important actor standing as a supervisor”.¹⁰¹ In light of its adoption and inclusion in the European Commission documents, Commission officials I interviewed in Brussels considered that the CLNM as such was not demanded in the EU accession process. It was argued that “there was no direct link between the EU accession process and the discussions on the Constitutional Act”.¹⁰² On the other hand, a representative of a Croatian CSO argued that “the CLNM was in fact a result of the SAA negotiations at the time, having in mind the timing of its adoption”.¹⁰³

After its adoption with a two-thirds majority of the Croatian Parliament, including the MPs representing minorities, the Commission its 2003 SAA Report criticized Croatia for excluding minority representatives from the drafting of the Law (EC, 2003b). In this direction, it was highlighted to me that “the Law was adopted in a version less favourable to the minorities than in its original version”.¹⁰⁴ On a more general note, however, the law in general has been considered by several interviewees as a solid legislative basis for the development of minority policies.¹⁰⁵ However, despite the final adoption of this piece of legislation, in the following reports or the Opinion on the application for membership in 2004, the Commission does not deal with the implementation of the CLNM in terms of formal benchmarking of implementation. In fact, “the first Action Plan for the implementation of this Law was adopted six years later, i.e. in 2008, once more excluding the representatives of minorities”.¹⁰⁶ Thus, a lot of questions remain around its implementation and the EU role in this segment, which will be discussed in the following chapter.

Local research and the fieldwork experience has also supported that in addition to the CLNM, the crucial element for the European Commission to

¹⁰⁰ Author’s interview with CSO representative, Zagreb, 5 May 2011

¹⁰¹ Author’s interview with advisor to the President of the Republic of Croatia, Zagreb, 20 May 2011

¹⁰² Author’s interview with European Commission Official, Brussels, 15 November 2010

¹⁰³ Author’s interview with CSO representative, Zagreb, 5 May 2011.

¹⁰⁴ Author’s interview with CSO representative, Zagreb, 5 May 2011.

¹⁰⁵ Author’s interview with CSO representative, Zagreb, 21 June 2011; Author’s interview with researcher, Zagreb, 21 April 2011.

¹⁰⁶ Author’s interview with CSO representative, Zagreb, 21 June 2011.

consider the minority criterion fulfilled was the “change in power at the end of 2003, when the new administration was able to form parliamentary majority thanks to the representatives elected in special constituencies for members of ethnic minorities” (Gjenero, 2006a p.74). In fact, this coalition constituted by the “HDZ and SDSS, which made the formation of HDZ led minority government in 2002 possible, placed the issue of minorities and particularly the return of Serb refugees into the government’s focus” (Petričušić and Žagar, 2007 p.40). The coalition was a result of the shift from a majoritarian to a proportional electoral system in 2000, as explained already in chapter four (Kasapović, 2000). Similarly, an interviewee considered that “the turn of the HDZ towards a semi-liberal pro-European narrative in 2003 would not have happened without the role of the EU and in particular the Commission”.¹⁰⁷

The presented analysis of the ways in which the European Commission supported the adoption and implementation of national policies and legislation in Macedonia and Croatia between 2001 and 2005 highlights the context-specific nature of the conditions and the lack of clear benchmarks for assessment. Also, the analysis indicates that the evolution and application of EU conditionality diverts from the ideal model in which there are mutually agreed conditions, studied in the theoretical chapter. Instead of this, the EU conditions and recommendations are unfulfilled and repeated from year to year, or mentioned in one year and then not followed up in the other. Only in the case of Macedonia, does the European Commission in the last report of 2004 refer to the Government plans and targets for realisation of the equitable representation strategy. In the other cases, there is no evident tendency towards a follow up of the activities. Furthermore, the European Commission reports pay very little attention to any implementation and are focused on the adoption of legislation and strategies, which is reflected in the national programmes as well.

5.4 Conclusion

This chapter has examined the consistency and application of EU conditionality in relation national to minority policies between 1997 and 2004/2005 when Croatia and Macedonia respectively became official candidate countries for EU accession. The objective of this chapter was to examine whether in the specific periods of analysis, there was a consistent stipulation of EU

¹⁰⁷ Author’s interview with advisor to the President of the Republic of Croatia, Zagreb, 20 May 2011.

conditions and benchmarks as well as response from the national level in both case studies. This chapter primarily focused on how EU conditionality has been implemented through the use of the FCNM and national legislation and the consistency of EU conditionality between 1997 and 2005. In an ideal type of conditionality, in the EU and national documents and through the interviews there should be consistent use of benchmarks which are understood and agreed by both the EU and the national level and should be evident in both policy documents and the interviews with stakeholders.

The analysis focused on two distinct periods in the EU-Western Balkans relations: the Regional Approach (1997-2000) and the early SAA period (2001-2005). In the first section, the chapter dealt with the reports issued from the EU in the period between 1997 and 2000, i.e. as part of the EU Regional Approach. Although minority policies were of primary importance for the relationship with the region at this point, there is no consistent approach in the EU and national documents. While the Conclusions of the General Council put forward specific conditions according to which the progress of the countries would be measured, these were not consistently followed in their European Commission Reports. Overall, in the period of the Regional Approach, the European Commission has fleetingly addressed selective minority issues at the country level at different points in time. Hence, there was no consistent approach on the issues addressed in both countries, or within one country chronologically. Second, there is no attempt to go beyond the legislative dimensions of minority policy and the assessments are repeated from one year to another. The approach of the EU in this period highlights the difficulties of employing conditionality without an objective of membership, which has been confirmed in recent literature on the European Neighbourhood Policy (See for example Schimmelfennig and Scholtz, 2008).

The second section examined the interactions between the EU and national governments in Macedonia and Croatia in the period since the signing of the SAAs between 2001 and 2004/2005 when the countries were granted official candidate status. On general, the SAA reports are more detailed and extensive than the European Commission monitoring documents of the Regional Approach examined in the previous section. In addition, in this period, the national governments responded by preparing their action plans for implementation of the SAA. However, the analysis does not indicate a link between the further structuring and elaboration of the documents with the improved consistency of

conditionality on minority policies. This is supported by several findings. First, the SAA as a document does not stipulate specific criteria or benchmarks on minority policies, a situation reflected in the national Action Plans for implementation of the SAA. Second, the three SAA progress reports between 2002 and 2004 provide general assessments without specific benchmarks for their implementation. In turn, the national action plans for their implementation correspond to the topics of the regular reports and provide a small number of planned activities for their implementation. The analysis was structured around two major issues which were identified as features of the EU approach during the fieldwork and were addressed as part of research questions of the dissertation: the use of the FCNM as a reference and national level legislation and policies. These two topics have structured the relation between the EU and the candidate countries in the absence of an EU level minority policy as explained in the introduction.

In relation to the use of international instruments, the chapter focused on the use of the FCNM as the only legally binding document dealing solely with minority issues and to which both countries are signatories. The analysis showed that whereas the European Commission during the 2002-2004 made fleeting references to the FCNM in relation to Macedonia, the first mention in the Croatian case is much later. Nevertheless, besides referring to the FCNM occasionally there are no direct references to the Reports of the Advisory Opinions on the implementation of the FCNM in both countries which would have provided a much more structured approach to conditionality. At the same time, the interview data highlights that the FCNM was a point of reference in the discussions between the European Commission and the national officials, underlining the informal dimension of conditionality. This was especially the case in Croatia, where despite the absence of the FCNM references from the EU and national documents (i.e., formal conditionality), the interviewees highlighted that in the period under examination in this chapter the Convention was a subject of discussion between the stakeholders (informal dimension of conditionality).

In the last section the chapter dealt with the EU's use of conditionality in relation to national level legislation, strategies and their implementation. In relation to Macedonia between 2002 and 2004 the European Commission focuses generally on the broad task of "implementing the Ohrid Framework Agreement". There are attempts to follow up on the implementation in relation to the equitable representation of minorities, discussed in chapter seven of the thesis. Only with respect to Macedonia, does the European Commission in the last report

of 2004 refer to the Government plans and targets for realisation of the equitable representation strategy. In the other cases, there is no evident tendency towards tracing a follow up of the activities. In Croatia, this entailed the adoption of the CLNM. While the European Commission notes in its first reports the delay in the adoption of this law, in the following two years it solely lists its formal provisions, rather than focusing on the implementation. In response, this approach is also adopted in the national documents for EU integration.

The presented empirical analysis in this chapter confirms the problems identified in the literature on non-*acquis* related conditionality, especially the lack of consistency in the design of stipulated conditions and weak follow up on obligations. In the period analysed in this chapter however, the instruments of the European Commission and at the national level were much less developed and the countries were moving from “potential candidates” to their formal inclusion in the EU accession process. At the same time, the membership perspective was weaker than in the period analysed in the following chapter. In the post-2005 period when both countries under examination were official candidates for accession new instruments of EU monitoring and stipulating conditions were introduced such as the regular Progress Reports, the European partnerships, as well as the European Commission Enlargement Strategies. In addition, the countries started preparing more detailed documents as the National Action Plans for the Adoption of the *Acquis* and Regular Progress reports themselves. Furthermore, in this period the European Commission started negotiations with Croatia providing more detailed benchmarks on every aspect of EU accession, including minority policies. In Macedonia, there were also several benchmarking experiences through the key priorities of the Accession partnerships, the Visa liberalisation roadmaps as well as the high level accession dialogue launched in 2012. Hence, the next chapter will examine this distinctively different phase in the EU accession process and assess whether the application of conditionality in relation to minority policies still suffers from the same inconsistencies highlighted in this chapter.

6. Conditionality and minority policies in the post-2005 period

6.1 Introduction

This chapter examines the role of the EU in shaping national minority policies in the two countries since 2005. The objective of the chapter is to examine how the EU has implemented conditionality by using the FCNM and national legislation, as well as whether in the specific period of analysis, there was consistent stipulation of EU conditions and benchmarks and response from the national level in both countries. In an ideal type of conditionality, there should be consistent use of agreed benchmarks followed up from year to year in the EU, national documents and the interviews with stakeholders. As was argued by Hughes et al, "if the logic of conditionality works in practice, we should be able to track clear causal relationships between the Commission's use of conditionality and the compliance of the candidate countries through policy, or institutional adjustments and normative change" (Hughes et al., 2005 p.2). The chapter therefore, aims to respond to all of the five research questions of the thesis by looking at the implementation of EU conditionality, the use of the FCNM and national legislation and agreements as well as the consistency of the conditions post-2005. Looking at a more recent period of EU involvement, it is also suitable for the examination of the role of domestic actors in the application of conditionality on national minority policies. Lastly, it also reflects on the implications of conditionality for the process of democratic consolidation in the two case studies in light of the policies it studies.

In comparison to the period examined in the previous chapter, since 2005 there were significant shifts in political climate in the Union in relation to enlargement, as well as the formal mechanisms of enlargement. In relation to the former, 2005 was marked by the failed referenda for the constitutional treaty in France and the Netherlands. In light of these internal problems of the EU, post-2005, "the momentum of the process of joining the EU seems to have been declined" (Fakiolas and Tzifakis, 2008 p.378). In response to the constitutional crisis, the question of the absorption capacity of the Union has been re-introduced in the discourse on enlargement. Phinnemore (2006) has argued that the "developments in the EU and in its handling of enlargement [... in this period...] raise questions about the commitment and capacity of the EU to extend its membership" to the region (p.8). At the same time, "the member states have been showing less scruple in instrumentalising enlargement for domestic political gains" (Hillion, 2010 p.6). This tendency has been demonstrated with the bilateral

issues often gaining prominence in the enlargement to the Balkans such as the name dispute between Macedonia and Greece, as well as the Slovenian – Croatian border issue as well. The result of this *nationalisation* of the enlargement policy, as Hillion (2010) puts it has resulted in questioning of the credibility of the perspective of EU membership.

However, by launching and concluding the negotiations in this period, Croatia has been less affected by the *enlargement fatigue*, than the case of Macedonia. In this sense, the opening of the negotiations with Croatia is crucial, as it signifies the intent of the Union to finish them (Avery and Cameron, 1998). Similarly, Chatzigiagkou (2010) argues that Croatia was an exception from the general trend of enlargement fatigue in the Union, supporting this attitude with the decision of France not to subject the accession of Croatia to a referendum. Macedonia is rather different in this sense, since the delay in the launching of the negotiations with Macedonia has diminished the credibility of the perspective of membership both among the elites and the population.¹⁰⁸ Thus, the post-2005 period is marked by higher commitment on the side of the Union to the accession of Croatia in comparison to the Macedonian case.

Since 2005 both countries under examination have been official candidates for EU membership, navigating their accession with the regular Progress Reports and the European partnerships. According to Maresceau (2003) “the publication of the progress reports [...] created an atmosphere of permanent follow-up and contributed considerably to the enhancement in the candidate countries of an awareness that the necessary measures must be taken” (pp.32-33). In addition, the respective governments started preparing more detailed documents as the NPAs and national Progress reports on the fulfilment of the conditions for accession. Furthermore, in 2005 the European Commission launched membership negotiations with Croatia providing further benchmarking through the screening reports on all negotiating chapters, including minority policies. The European Commission also employed also several benchmarking exercises for Macedonia through the key priorities of the Accession Partnerships and the visa liberalisation process. Due to this further ‘formalisation’ of the relations between the EU and the two candidate countries it can be expected that many of the shortcomings identified in the previous chapter (such as inconsistency and vagueness of the conditions) would be overcome. Hence, the

¹⁰⁸ Author’s interview with senior civil servant in the Secretariat for European Affairs, Skopje, 22 December 2010.

objective of this chapter is to analyse if these novel instruments in the post-2005 period contributed to the increasing clarity of conditionality and consistency in its application.

First, this chapter will present the post-2005 developments with respect to the benchmarking for EU accession. More specifically it examines the introduction of chapter 23 on judiciary and fundamental rights as a most important instrument of the new more structured approach to the minority policies in the period studied. As already explained, with this chapter minority policies have become a formal part of the negotiations process. The empirical analysis that follows is divided in two sections: the reliance of the EU on FCNM and its use in the accession process and the use of national legislation as an element of EU conditionality.¹⁰⁹ Hence, both sections relate to the findings of the previous chapter in trying to trace whether there is more structured application of the FCNM as a benchmark and the national policies that became elements of EU conditionality post 2005. In relation to Macedonia the analysis focuses on the adoption of the law on languages, whereas in Croatia it deals with the establishment and functioning of the local councils of national minorities.¹¹⁰ Lastly, on the basis of the empirical analysis presented the chapter reflects on the 'success' of chapter 23 in stipulating clear and consistent benchmarks in relation to minority policies in the accession negotiations with Croatia.¹¹¹

6.2 Chapter 23 and benchmarking – new elements of conditionality in the post – 2005 period

The 2004 EU enlargement and the accession process with Bulgaria and Romania brought about change in the management of the conditionality for the Western Balkans. Generally, although the negotiations for accession appear to be following a well developed path, all rounds of enlargement so far have shown a particularity which separates each from the others (For a discussion see Mayhew, 2000). As explained in the introduction, since 2005, the structure of the negotiating chapters and the EU reports has been amended with the

¹⁰⁹ Following the structure set in the previous chapter.

¹¹⁰ The most extensive national policy that the EC reinforces in its reports, the representation of minorities in the public sector is dealt in the following chapter.

¹¹¹ Croatia is the first and until now only country that negotiated this chapter. The screening for the chapter for Montenegro is ongoing at the time of the writing, see website of the Ministry of Foreign Affairs of Montenegro: <<http://www.mip.gov.me/index.php/Opste/pregovori.html>> Accessed 04 May 2013]

establishment of chapter 23: Judiciary and fundamental rights divided in three sections: judiciary, anti-corruption policy and fundamental rights. The launching of this chapter can be linked to two major developments, as was identified by a majority of my interviewees: first, the experience of the 2004/2007 enlargements and second, the nature of the potential candidate countries from the Western Balkans. In relation to the former, the problems encountered in relation to the judiciary and anti-corruption policies in Bulgaria and Romania were an impetus to give more emphasis to these specific issues (See Papadimitriou and Gateva, 2009). The internal situation and ethnic diversity of the Balkans raised the significance of minority policies and post-war reconciliation which were also included in this chapter. According to interviewees from the European Commission, “these policy areas were not tackled in an organized way in the past and the idea was that to bring them into the accession negotiations by adding an element of greater structure to the process”.¹¹²

Besides setting up an additional chapter in the negotiating structure, the Commission also employed a new approach in terms of introducing the tool of ‘benchmarking’. According to the European Commission, the introduction of the benchmarks as a *measurable* tool is a result of “the *lessons learnt* from the fifth enlargement. Their purpose is to improve the quality of the negotiations, by providing incentives for the candidate countries to undertake necessary reforms at an early stage” (EC, 2006b p.6 emphasis added). Thus, in the area of minority policies, the negotiations with Croatia provide the most detailed stipulation of accession conditions in relation to minority policies through the screening process, as well as the benchmarks for opening and closing the negotiations. The former concern “key preparatory steps for future alignment, and the fulfilment of contractual obligations that mirror *acquis* requirements”, whereas closing benchmarks “primarily concern legislative measures, administrative and judicial bodies, and a track record of implementation of the *acquis*” (Spernbauer, 2007 p.282). This mechanism “first developed in the context of the Romanian and Bulgarian post-accession verification process, is now being implemented for each chapter of the EU’s *acquis* under negotiation” (Papadimitriou and Gateva, 2009 p.162). The benchmarking tool is therefore specifically devised for areas of the *acquis*, but also for the purpose of overcoming the difficulties in non-*acquis* areas

¹¹² Author’s interview with European Commission official, Brussels, 08 December 2010.

in terms of the consistency of conditionality and the subjectivity of the assessment of compliance.

In Macedonia, the Commission employed benchmarking without having launched membership negotiations through the 'key priorities' of the Accession Partnerships, which indicated the primary conditions for progress in the accession. A similar exercise process was employed through the visa liberalisation dialogue which touched upon minority rights as well. Most recently in 2012 in Macedonia the Commission launched a so-called High level Accession dialogue dealing with the most pressing issues of the chapters 23 and 24 (Europa Press Release, 2012). This dialogue is based on recommendations from the European Commission, including issues such as developing the dialogue between the communities and the representation of minorities in the administration.¹¹³ From the presented overview it is clear that in the post-2005 period the European Commission has attempted to further formalise its benchmarking system and the following sections will examine whether this has resulted in adding consistency, clarity and a common understanding of the conditions among the stakeholders.

6.3 Empirical analysis – the use of the FCNM and the national legislation as elements of EU conditionality post-2005

Having in mind the further development of the mechanisms for accession in the post-2005 period it can be expected that the problems of the lack of clarity and inconsistency noted in the previous period would be overcome. Therefore, due to the further 'formalisation' of the process, it can be assumed that in the post-2005 period the EU conditions would be more structured and consistent and would be met by follow-up at the national level. Building upon the empirical discussion in the previous chapter which highlighted inconsistent use of EU conditionality prior to 2005, this section therefore examines the use of EU conditionality in the post-2005 period. The section picks up on both topics discussed in the previous chapter – the use of the FCNM as a benchmark for EU accession as well as the use of national legislation as an element of EU conditionality in both countries.

¹¹³ The latter is discussed in the following chapter.

6.3.1 The FCNM as an element of EU conditionality

The previous chapter indicated that it is difficult to trace systematic use of the FCNM as a benchmark in relation to minority policies between 2001 and 2005 period through the EU and national documents. Furthermore, while all stakeholders agreed on the potential of the FCNM as a source of benchmarking in the area of minority policies, it was argued that this has not materialised. Although with the evolution of the conditionality instruments it can be reasonably expected that the European Commission will attempt to use the FCNM, in the post-2005 period, the EU documents on Macedonia or Croatia do not make more specific use of the Convention for setting any benchmarks or conditions.

The ratification of the FCNM by Macedonia is only noted in the 2005 Analytical report as factual information without any further follow-up (EC, 2005a). A general reference to the FCNM is also found in the European Partnership of 2006 which puts forward the following short-term priority: “promote respect for and protection of minorities in accordance with the ECHR and the principles laid out in the Council of Europe’s FCNM, in line with best practice in EU member states” (Council, 2006b p.61). The wording in the 2008 Accession Partnership is similar, although in this case the Council calls upon Macedonia to fully comply with the FCNM (Council, 2008b). The use of the FCNM in this case has resulted in expectations in literature it could be the basis to “more systematic Commission’s references to the FCNM monitoring reports” (Hillion, 2008 p.6). Among the stakeholders, however, the broad framing of this priority was highly criticised by my interlocutors at the national level “as vague and as difficult to be operationalised through the bureaucratic mechanisms of the enlargement process”.¹¹⁴ Hence, the sporadic mention of the FCNM in the European Commission documents was considered as insufficient by my interlocutors, especially the civil servants at the national level, responsible for the implementation of the EU conditionality.

In response to these fleeting references to the FCNM in the EU documents, the first Macedonian national document which refers to this Convention is the 2006 NPAA which underlines that: “in addition to the obligations arising from this Convention, the basic framework for the minority protection policy in the Republic of Macedonia is the implementation of the Framework Agreement, which largely exceeds the standards laid down by the

¹¹⁴ Author’s interview with senior civil servant in the Mission of the Republic of Macedonia to the EU, Brussels, 18 November 2010.

FCNM” (Government of the Republic of Macedonia, 2006a p.33). With this statement, as was confirmed by my interviewees, the national government questioned the usefulness of the FCNM as a reference point for minority protection due to the advanced national legislation.¹¹⁵ This is clearly also demonstrated in the largely formal approach mentioning the submissions of the regular reports for the implementation of the FCNM in the EU accession documents, without specific use of the Convention or its reports. This national approach therefore confirms the suspicion of Kymlicka who has argued that “the new norms that have been developed by the Council of Europe [i.e. FCNM] and the OSCE do not in fact address the distinctive challenges raised by national minorities” (Kymlicka, 2006 p.42).

The interview data in relation to the FCNM as a reference point or benchmarking for minority rights also provided contradictory opinions. These differences were especially prevalent among the Commission officials in Brussels and in the European Commission Delegations at the national level. In the words of an interlocutor in Brussels, “the FCNM was “useful” and as an instrument used in the preparation of the Progress Report”.¹¹⁶ Quite contrary, the European Commission Delegation staff at the national level in general considered that “the FCNM was not a source of reference for the structuring of EU conditionality”.¹¹⁷ This disparity which will appear on several other policy areas was illustrated by one of my interviewees from the Delegation of the European Commission in Skopje who highlighted that “the Delegation is just a monitor which gives an account to the Commission services in Brussels, without involving itself in policy making”.¹¹⁸ Overall, it was clear from my contacts with the European Commission that there is no common stance on this point, which largely can explain the differences in the progress reports examined earlier.

Interviewees both from the national level and the European Commission pointed to the FCNM as a source of reference in this area, but at the same time also expressed their doubts about its applicability since the national framework in Macedonia exceeds the requirements of the FCNM. National civil servants in Macedonia highlighted that the European Commission Reports were much less

¹¹⁵ Author’s interview with senior civil servant in the Secretariat for European Affairs, Skopje, 22 December 2010.

¹¹⁶ Author’s interview with senior European Commission official, Brussels, October 2010.

¹¹⁷ Author’s interview with European Commission official, Skopje 21 January 2011.

¹¹⁸ Author’s interview with European Commission official, Skopje 21 January 2011.

detailed than the FCNM and that in the end it is not clear how the issues are picked up from one to the other. Similarly, while one official considered the CoE to be the primary organisation in relation to minority areas, others differed. Hence, it was also argued that “while in the past the Council of Europe was clearly *chef d'file*, today there is more complementarity and information exchange”.¹¹⁹ Quite contrary to this opinion, another Commission official stressed: “I am not sure that the EU has much to offer Macedonia in this respect”.¹²⁰ Lastly, it was argued that “the capacity of the European Commission in the area of minority policy is generally weak and that they could use the CoE expertise more thoroughly”.¹²¹

Representatives of external actors engaged in this policy area such as think tanks at the EU level commented that “this discrepancy is likely to go on until the EU develops specific rules in this area”.¹²² Moreover, studies have been conducted by NGOs which have compared the EU reports and the FCNM reports which have pointed to inconsistencies, like for example the 2007 FCNM report warning of serious deficiencies in instruction *of* and *in* minority languages in Macedonia, which the EU Report omitted completely (Bokulić and Kostadinova, 2008). It was clear from my interviews with the European Commission that there is no common stance on this point, which can largely explain the differences in the progress reports examined earlier. This specificity connected to the Macedonian context creates problems in the usage and ultimately usefulness of the FCNM as a tool for benchmarking for minority protection in the context of EU conditionality.

While in the previous chapter it was shown that in the pre-2004 period the European Commission did not use the FCNM extensively in reference with Croatia, in the 2006 Accession partnership for the first time it included a priority with a reference to the FCNM, which was same as in all other countries of the region at the time:

“Promote respect for and protection of minorities in accordance with the European Convention on Human Rights and the principles laid down in the

¹¹⁹ Author’s interview with European Commission official, Brussels, 8 October 2010.

¹²⁰ Author’s interview with senior European Commission official, Brussels, 5 October 2010.

¹²¹ Author’s interview with senior civil servant in the Ministry of Foreign Affairs, Skopje, 07 March 2011.

¹²² Author’s interview with senior think tank analyst, Brussels, 5 October 2010.

Council of Europe's Framework Convention for the Protection of National Minorities and in line with best practice in EU Member States" (Council, 2006a p.33).

On the basis of the inclusion of such priorities in the accession related documents, Hillion (2008) argues that the FCNM has become part of the normative basis of EU enlargement on minority policies. Two years after this Council priority, however, the FCNM is excluded from the Accession partnership on Croatia, questioning this assessment. Hence, in 2008, the new priority for Croatia was framed in the following manner: "promote respect for and protection of minorities in accordance with international law and best practice in EU Member States" (Council, 2008a p.54). At the same time, as explained in the previous chapter, terms like European standards and best practice in the EU member states were considered largely problematic by the national stakeholders in my interviews. Overall, having in mind that the protection of minorities was one of the core conditions for EU accession of Croatia and at the time the country was launching its negotiations, the non-inclusion of the FCNM in the priorities of the Accession Partnerships was criticised by my interlocutors as a "missed opportunity for the EU to substantiate its requirements".¹²³

At the national level, the Croatian 2005 NPAA refers solely to the submission of the FCNM report with respect to the work of the Office for national minorities (Government of the Republic of Croatia, 2005). The same approach is noticeable in the NPAA in the following year when the FCNM is referenced solely since the aforementioned office prepared "the Second Report of the Republic of Croatia on the Implementation of the Framework Convention for the Protection of National Minorities [... and ...] prepared its response to the opinion of the Council of Europe Advisory Committee" (Government of the Republic of Croatia, 2006 p.49). Similarly, the 2008, 2009 and 2011 NPAA in relation to the FCNM mention seminars that the Government Office for National Minorities organised on the implementation this Convention (Government of the Republic of Croatia, 2008b, 2009, 2011c). The trainings and seminars as part of the national responses to conditionality were underlined as a "benign way of tackling conditionality when

¹²³ Author's interview with senior civil servant in the Ministry of Foreign Affairs, Zagreb, 2 June 2011.

there is no will for real implementation” or “when the requirements from the EU are not clear”.¹²⁴

While the FCNM was not used in the Progress Report systematically, the screening process was the primary possibility in which the Commission was in a position to use the FCNM.¹²⁵ According to the Commission the screening is a process in which “the Commission carries out a detailed examination, together with the candidate country, of each policy field (chapter), to determine how well the country is prepared” (EC, 2012d). In its screening report of 2007, the European Commission does refer to the FCNM:

“Article 1 of the Framework Convention for the Protection of National Minorities confirms that human rights include minority rights. The latter include the right to non-discrimination of a person belonging to a national minority; the freedom of association, to assembly, of expression; the freedom of religion; the right to use one's language; and the effective participation in public affairs” (EC, 2007b p.3).

However, in the substantial negotiating documents, most notably in the Interim report that the Commission published on the progress and the outstanding benchmarks on chapter 23 there is no mention of the FCNM (EC, 2011d). European Commission officials explained this lack of use of the FCNM with the lengthier periods of assessments that the CoE undertakes. “The cycle of their reporting is quite long and drawn out, it’s every four years or so when they do a report”.¹²⁶ Civil servants which participated directly in the negotiations highlighted that “I can only expect that the European Commission used the FCNM reports, however it is very difficult for me to assess the level of knowledge because the communication we had was largely based on them asking questions and us replying to those questions”.¹²⁷ MEPs working on Croatia and the accession of the

¹²⁴ Author’s interview with high level civil servant in the Ministry of Justice, Skopje, 18 January 2011, Author’s interview with representative of the Ministry of administration, Zagreb, 02 May 2011.

¹²⁵ Author’s interview with senior civil servant in the Ministry of Foreign Affairs, Skopje, 07 March 2011, Author’s interview with senior civil servant in the Ministry of Foreign Affairs, Zagreb, 2 June 2011.

¹²⁶ Author’s interview with European Commission official, Brussels, 08 December 2010.

¹²⁷ Author’s interview with representative of the Ministry of administration, Zagreb, 02 May 2011.

Western Balkans, on the other hand, highlighted that “there is not enough inter-linkage and connection between the EU and CoE on minority issues”.¹²⁸

The trend of not using the FCNM in the accession negotiations continued until the end of this process, as the Convention is not mentioned in the most detailed document submitted from the Croatian government in May 2011. At the same time, other relevant conventions of the CoE and UN with respect to the protection of human rights are referenced, thereby illustrating the lack of inclusion of the FCNM and its reporting system in the EU accession process (Government of the Republic of Croatia, 2011b). Representatives of the Ministry of Foreign Affairs which were involved in working with both organisations had the most defining view on this issue. Namely, it was highlighted that “whereas in the previous enlargement the European Commission used references to the FCNM, today they [i.e. the Commission] are the focal point which collects the data on this issue and deliver an assessment”.¹²⁹ It was similarly underlined that the process is rather different than in the previous enlargement, when they were drawing upon information from the CoE directly”.¹³⁰ It was also mentioned that “the EU did not use the FCNM in peer missions and similar and most of the measures were ad hoc measures”.¹³¹ At the same time, as will be demonstrated in the following chapter, remarks stemming from the European Commission were adopted by the FCNM Advisory Committee, illustrating the evolving nature of the EU in national minority issues.¹³²

External actors such as NGOs which monitored the negotiations and were invited by the European Commission to give inputs on the progress of Croatia in the negotiations on chapter 23 shared this opinion largely. Several (albeit different) reasons were given behind this tendency. On the one hand, it was pointed that “the European Commission did not deal with the advisory committee opinions, because the latter deals with the topic in a much wider manner than the European Commission itself”.¹³³ The dominant view, however, was that the “the FCNM was rarely mentioned. Concrete benchmarks from the screening process on

¹²⁸ Author’s interview with Member of European Parliament, Brussels, 09 December 2010.

¹²⁹ Author’s interview with Croatian diplomat, Brussels, 26 November 2010.

¹³⁰ Author’s interview with Croatian diplomat, Brussels, 26 November 2010.

¹³¹ Author’s interview with senior civil servant in the Ministry of Foreign Affairs, Zagreb, 2 June 2011.

¹³² See Chapter seven: Representation of minorities in the public sector.

¹³³ Author’s interview with minorities’ expert, Zagreb, 21 April 2011.

chapter 23 formed the basis for the negotiations”.¹³⁴ According to a CSO activist, “these benchmarks were stipulated on the basis of national legislation, rather than international mechanisms”.¹³⁵ Thus, it was summarised that the European Commission conditionality acted foremost as a reinforcement mechanism of national legislation which is examined in the following section.

Overall, the analysis of the use of FCNM as a benchmarking tool for minority policies points to a set of different conclusions both in terms of the “formal” story based on the official documents and the interview data. The European Commission fleetingly mentions the FCNM in its reports and the European/Accession partnerships without consistency and this is reflected both in the national documents and stakeholders’ understandings. National documents in Macedonia have underlined that the national framework for minority protection is much more detailed than the FCNM thereby minimising its potential to be used as a benchmarking tool. The same inconsistent conclusions are to be drawn from the interviews both at the national and European level in Brussels since the FCNM is seen as useful in principle, but without any operationalisation in the accession process. In Croatia, although the negotiations were an opportunity for using the FCNM as a benchmark because of the nature of the screening process and the new negotiations mechanisms, they do not seem to have been linked to an increasing use of the FCNM as a benchmarking tool by the Commission.

6.3.2 National legislation as an element of EU conditionality

Law on the use of languages in Macedonia

As was demonstrated in the previous chapter, the European Commission in the case of Macedonia supported the adoption and implementation of legislation, considered as part of the OFA. In the analytical report of 2005 the European Commission concludes that “the OFA legislative programme was completed [...] and the remaining task is to ensure continued and effective implementation, thereby further strengthening the climate of confidence and stability” (EC, 2005a p.12). In the post-2005 period the reports deal with various minority related issues, but mostly focus on the use of languages and the representation of national minorities in the administration. Since, the latter policy is dealt with in detail in the following chapter; this chapter examines the adoption of the law on languages and its evolution to an element of EU conditionality.

¹³⁴ Author’s interview with CSO representative, Zagreb, 6 June 2011.

¹³⁵ Author’s interview with CSO representative, Zagreb, 19 April 2011.

The use of minority languages was a contested issue in the previous enlargement as well. According to Kymlicka, “government decisions about the language of public schooling and public administration are in effect decisions about which language groups will survive” (Kymlicka, 2002c p.18). Schöpflin has argued that “the role of language as an ethnic marker has been particularly salient in Central and Eastern Europe and cultural communities in the region use language in this way with great emphasis” (Schöpflin, 1996 p.101). At the same time, Csergő (2007) has shown that the diversity of European rules in this area has not assisted the success of EU in the Eastern enlargement, specifically the cases of Romania and Slovakia. In a more recent study, she goes on to argue that “international incentives, especially the prospect of EU accession, played a role in shaping these changes, but the influence was indirect and unpredictable” (Csergő and Deegan-Krause, 2011 p.103).

Specifically in Macedonia, language “strikes a sensitive note with ethnic Macedonians” (Koneska, 2012 p.36). The Macedonian language was first recognised with the establishment of first Macedonian state in the framework of the Yugoslav federation in 1945. The codification of the language was subject to internal divisions and external contestations. Internally, there were contestations over the alphabet and the region on which the official language would be based (For a discussion see Rossos, 2008). Externally, the language has been contested foremost by Bulgaria with the argument that the “the Macedonian language was in reality a Bulgarian dialect” (Rossos, 2008 p.74). In fact, although Bulgaria was the first country to recognise Macedonia, it does not recognise the existence of a Macedonian language. Similar stance has been taken by Greece which supports the view that the language is a variant of Bulgarian or Serbian, but not a language in its own right (For a discussion see Danforth, 1997).

As a result, the calls from the Albanian community for increased use of the Albanian language were not welcomed among the Macedonian political elite and the stance of the EU on the issue has been rather ambiguous. In the EU documents the law on languages for the first time is directly mentioned in the Analytical report 2005 when the European Commission notes that “the coalition partners [DUI and SDSM] have agreed that, although not formally required by the Framework Agreement, a law on the use of languages should be adopted to complement the substantial number of existing sectoral laws specifying use of the Albanian language” (EC, 2005a p.30). Hence, formally the European Commission left the issue to be decided at the national level. Thus, the European/Accession

partnerships and Progress Reports between 2006 and 2008 do not contain a direct reference to this law, indicating that the European Commission did not include this requirement formally as a condition in the case of Macedonia.

While the issue of the law on languages was left formally to the national level, national officials highlighted that informally there was pressure from the European Commission for the adoption of such a law. According an interviewee of mine, “the EU representatives in Macedonia insisted that we make a list of laws to be adopted for the OFA implementation and one of the big differences between the coalition partners was whether we need a separate law on languages”.¹³⁶ This *difference* as was highlighted by my interviewees is clearly visible in the EU and national strategic documents for EU accession which show a mixed record with respect to the inclusion/non-inclusion of the law on languages for the purposes of EU accession. Contrary to the European Commission stance in the analytical report, in the answers to the Questionnaire for membership, the government at the time identifies that “the only remaining Law to be adopted in accordance with Section 6 [of the OFA] is the Law on Use of Languages of Communities in the Republic of Macedonia, which will be adopted in the first half of 2005” (Government of the Republic of Macedonia, 2005). Hence, while the European Commission in its report does not consider this law as an obligation of the OFA, the government had a different opinion in 2005.

Following the granting of the candidate status in December 2005, in the 2006 NPAA retained the obligation of adopting such a law, even though according to this document by the same government the law on languages is not an OFA obligation (Government of the Republic of Macedonia, 2006a). The references to the law as an obligation of the OFA are a result of the peculiar role assigned to the EU in the post-Ohrid Macedonia, as a monitor of its implementation which has been noted in literature and was also confirmed by my interlocutors.¹³⁷ As a result, all of the requirements/laws foreseen by the OFA were automatically considered as an element of EU conditionality.¹³⁸ Anecdotally, the role of the European Commission in this sense is illustrated in the reference used by many European Commission /EU officials: *‘the road to Brussels leads through Ohrid’* (Solana, 2004).

¹³⁶ Author’s interview with Member of Parliament, Skopje, 23 December 2010.

¹³⁷ See section on context in Macedonia in chapter three.

¹³⁸ Author’s interview with high level civil servant from the Secretariat for European Affairs, 22 December 2010.

Despite the differences on whether or not it was an OFA obligation, until 2006 this law was mentioned in the national strategic documents. Thus, the Action Plan for the European Partnership prepared at the same time as the 2006 NPAA foresaw the adoption of such a law in the first half of 2006 (Government of the Republic of Macedonia, 2006b). This is the only official document where the adoption of a law on the use of languages appears as an official obligation by the government with a specific deadline and was explained by my interlocutors as a “self-imposed obligation”.¹³⁹ Bearing in mind that in 2006 there was no draft text prepared of this law and the parliamentary elections were already scheduled for the summer the same year “it is likely that the outgoing government formally undertook this obligation, knowing that it would not be able to fulfil it before the end of its term of office”.¹⁴⁰

Following the change of government in the summer of 2006, the law on the use of languages does not appear in the subsequent planning documents, i.e. the NPAA 2007 and 2008 (See Government of the Republic of Macedonia, 2007a, 2008b). The non-inclusion of the Law on languages in the primary planning document for EU accession indicates that the law was not accepted by the new coalition government [VMRO-DPMNE and DPA] as an obligation for the EU integration purposes. This was confirmed by my interviewees who have underlined that “the strategic documents for EU accession are also very political in their essence having in mind that in non-*acquis* areas they also represent the government will”.¹⁴¹ In practice, the new government was attempting to resolve the language issue solely in terms of the use of the Albanian language in the Parliament, by amending the rulebook of the Parliament (Mehmeti, 2007).

However, in the summer of 2008 following a change of the Albanian party in government a breakthrough occurred when the Parliament adopted such a law upon a proposal from the DUI, the Albanian party that replaced DPA in government after the 2008 elections.¹⁴² The Law on the Use of Language Spoken by at least 20% of citizens in the Republic of Macedonia and in the Local Self-government Units (hereinafter law on the use of languages) was swiftly placed on

¹³⁹ Author’s interview with high level civil servant from the Secretariat for European Affairs, 22 December 2010.

¹⁴⁰ Author’s interview with high level civil servant from the Secretariat for European Affairs, 22 December 2010.

¹⁴¹ Author’s interview with high level civil servant from the Secretariat for European Affairs, 22 December 2010.

¹⁴² For more details see chapter three on contextual background.

the agenda without going through the regular consultation procedures.¹⁴³ The adoption of such a law was actually a part of a previous agreement between the ruling party VMRO-DPMNE and DUI, so-called May Agreement - an informal arrangement made for the return of the DUI in Parliament following several months of boycott in 2007. As was reported by a local newspaper, the preparation and adoption of the law on the use of languages was a part of this understanding.¹⁴⁴ Recent studies on EU involvement in Macedonia have argued that “the May agreement case can be perceived as some sort of a turning point for EU involvement in ethnic conflict management in Macedonia as this process has been marked by the increasing persuasive role of the EU” (Markovic et al., 2011 p.22). An interviewee of mine explained that the law was significant because “the Albanians, DUI especially, since the signing of the OFA needed a symbol that this issue was resolved”.¹⁴⁵ At the same time, DUI was a coalition partner in the 2005 government which initially included the law as an obligation for EU accession purposes, thereby illustrating the dynamic nature of conditionality and its dependence on the domestic actors and their agendas.

Even though the European Commission and the government in power in 2006 and 2007 did not consider the law to be an element of EU accession conditionality prior to its adoption, the regular progress reports and the national documents for European integration have nevertheless covered the progress in its implementation since 2008. The 2008 Progress Report from the European Commission acknowledges its adoption and considers that “it clarifies and extends the scope for the use of non-majority languages at all levels of state and local self-government [...]” (EC, 2008b p.19). However, the European Commission also notes that “the law does not sufficiently address the use of languages of the smaller ethnic communities” (EC, 2008b p.19). A year later, the European Commission notes that there has been some progress in implementing this law as some chairpersons of parliamentary committees began using Albanian, however little progress can be reported regarding the use of the languages of the smaller ethnic communities (EC, 2009b). Hence, after its adoption the European Commission has

¹⁴³ Official Gazette of the Republic of Macedonia No. 101/2008

¹⁴⁴ The Agreement is not available in public, but its main points are summarised by a newspaper article at the time, VMRO-DPMNE and DUI hide the Agreement [ВМРО-ДПМНЕ и ДУИ го затскриваат договорот] Dnevnik daily newspaper, 30 May 2007:

<<http://www.dnevnik.com.mk/?itemID=C13A64D422158841A5A52709A2C06E08&arc=1>> [Accessed 22 June 2010]

¹⁴⁵ Author’s interview with Member of Parliament, Skopje, 23 December 2010.

begun monitoring the implementation of this law, although originally the issue was not part of the EU conditions.

Similarly as in the case of the official European documents, following its adoption, the national documents such as the NPAA and the national contributions to the progress reports consider the law on the use of languages as an element of EU conditionality and reflect upon the plans and progress in its implementation. Although the 2009 NPAA does not undertake any specific obligations directed towards its implementation and does not address the issue of use of languages of the smaller ethnic communities, the law is included as an element on which the country reported in the context of its EU accession process (Government of the Republic of Macedonia, 2009a). The 2010 NPAA underlines that efforts will be made to obtain extend the use of this law to state institutions where this was not possible due to the lack of technical equipment, thereby in a way 'justifying' its feeble implementation to Brussels (Government of the Republic of Macedonia, 2010). Nevertheless, both documents mention the law on the use of languages as an element which is being monitored in relation to the country's EU accession.

National and European Commission officials interviewed for this research had contrasting views on the role of this law as an element of the EU accession conditionality. For national officials "the law has become part of conditionality", and they stressed "the change of the European Commission approach from considering the issue to be outside of its competences to its gradual inclusion in conditionality".¹⁴⁶ On the one hand, European Commission interviewees in Brussels highlighted that "they expect this law to be one of the main issues which will be included in the benchmarks in the accession negotiations", thereby illustrating that the issue has firmly entered the array of EU political criteria.¹⁴⁷ On the other hand, European Commission interviewees in Skopje stressed that "the law is not an issue of interest to the Commission in the accession process".¹⁴⁸ This conflict within the Commission itself underlines the problems of stipulating conditionality in absence of clear EU rules. This case therefore illustrates the vertical rather than horizontal competition of competences in the Commission.

¹⁴⁶ Author's interview with high level civil servant in the Ministry of Justice, Skopje, 18 January 2011.

¹⁴⁷ Author's interview with European Commission official, Brussels, 11 October 2010.

¹⁴⁸ Author's interview with European Commission official, Skopje, 27 January 2011.

Academic research has recognized the Commission is a fragmented organisation primarily in relation to different DGs (Nugent, 1997, Morth, 2000), however this example also illustrates the prevalence of different opinions within the various DGs in terms of their offices in Brussels and the representation in the respective countries.

Having in mind the mixed record of EU and national documents as well as the interview data regarding the adoption and implementation of this specific law it is very difficult to draw a precise conclusion on the role EU conditionality. Whereas the law was not a specific obligation according to the Progress Reports and the European/Accession Partnerships before 2008, following its adoption it became an element of EU conditionality blurring the distinction between the impetus for change coming from the European and the national level. This case clearly illustrates the role domestic politics plays in the operation of conditionality, illustrating its bottom-up dimension, which has important implications for its analysis. It also highlights the significance of the informal pressures of the European Commission and the lack of a common understanding between actors at the EU and national levels as to what constitutes EU conditionality.

With this conclusion, the analysis largely confirms the findings of authors such as Brusis that emphasize the importance of domestic factors in the outcomes of conditionality in areas not regulated by the *acquis* (Brusis, 2005b). The support for adopting the law in the case analysed was in fact dependent on the minority party and its participation in government, i.e. ability to realise its own agenda. Moreover, the actors involved both at the EU level and national authorities had differing views of the inclusion/non-inclusion of this law as a condition of EU accession, illustrating clearly the existing lack of consensus between and within these two groups of stakeholders. Lastly, the law on languages illustrates the largely informal channels the European Commission used in its communication on conditionality and the informal processes taking place which determined the outcome of the policy.

National minority councils in Croatia

One of the most important elements of the Croatian CLNM was the introduction of the national minority councils in the direction of improving minority participation in public life, which is amplified in the conditions of post-conflict. According to the CLNM, these councils are foreseen as a form of minority

local self government. Among other competences, they have the right to make proposals to local governments on improving the position of minorities as well as propose candidates for local office positions.¹⁴⁹ However, their establishment and functioning has been burdened with problems. The first election for minority councils held on 18 May 2003, were “called at short notice and held in the immediate aftermath of a long period of vacation connected with the Catholic and Orthodox Easter” (Zanotti, 2008 p.241). As a result, Serbs and Roma were among the minorities that had the lowest rate of participation. In this direction, a study of the openness of Croatian society in 2006 in this vein concluded that the “functioning of the local authority level is the weakest link of minority protection with respect to the exercise and protection of minority rights” (Gjenero, 2006a p.75).

Hence, the Councils are not surprisingly in the focus of the European Commission in Croatia in the post-2005 period. The European Commission in this period deals with aspects of implementation of the CLNM at the national level in terms of drafting a plan for the implementation of the CLNM, establishment and functioning of the Councils for national minorities at the local level and the employment of minorities in state administrative, judicial bodies and the police. Since the next chapter deals with the employment of minorities in the public sector in both countries, this section will deal with the former policy. In terms of the functioning of the local minority councils in 2005, the Commission notes that “misunderstandings and a lack of awareness among both the local authorities and the minority groups are widespread with respect to the role of the local minority councils” (EC, 2005b p.21). In the next year, the Commission notes that “the capacity of CNMs to advise local government in relation to minority issues [...] continues to go unrecognised by the majority of local authorities” (EC, 2006a p.11). The same remark is repeated in the 2007 progress report which underlines that “the capacity of the CNMs to advise local government in relation to minority issues – as provided for under the CLNM – goes unrecognised by the majority of local authorities and many local councils struggle to obtain premises and funding” (EC, 2007a p.13). Similarly, the OSCE at the time also remarked that the “local Councils of National Minorities established by the CLNM as advisory bodies to

¹⁴⁹ Constitutional Law on the Rights of National Minorities, Official Gazette no. 155/2002, available at: http://www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation_Constitutional-Law-on-the-Rights-NM.pdf [Accessed 04 May 2010]

local and regional self-government units are, with a few positive exceptions, still struggling to be recognized as institutional partners” (OSCE, 2006 p.7).

Despite these continuous criticisms from the European Commission, the national authorities between 2006 and 2008 do not foresee any specific activities for advancing the role of the councils. The 2006 NPAA reports on the number of councils registered (272), noting that 124 of them are councils of the Serbian national minority (Government of the Republic of Croatia, 2006). Similarly, the 2007 NPAA reports that in by that year 274 councils and all national minority representatives had been registered, and measures were being taken to keep the system functioning, without elaborating on the measures undertaken (Government of the Republic of Croatia, 2007). As of 2007 the government starts reporting as well on the seminars which were delivered to the Councils and also (Government of the Republic of Croatia, 2007).¹⁵⁰ As was argued by my interviewees and discussed in the previous chapter, “training has been the immediate and generally least effective common response to dealing with EU requirements on capacity building”.¹⁵¹

In the same period, the European Commission also supported the Councils with a CARDS project in the regions which were most affected by the war, i.e. areas of special state concern. The support to the minority councils in the areas of special concern is a result of the numerous difficulties linked to the implementation of the CLNM in the regions which were not peacefully reintegrated in the Croatian state following the wars of the 1990s.¹⁵² In the following year, the government reports on the “elections for members of national minority councils in local and regional self-government units were held on 17 June 2007 [...] for 308 national minority councils and 228 national minority representatives, with a turnout of 12.76 %” (Government of the Republic of Croatia, 2008b p.67). The low turnout was remarked in the European Commission Progress Report which underlined that “the government financed the organisation of the elections but made a limited effort to promote them” (EC, 2007a p.13). Overall, prior to the launching of the official negotiations on chapter 23, it can be concluded that despite the European Commission’s remarks, there was no significant response at the national level.

¹⁵⁰ The support solely in terms of trainings is similar as the case of the FCNM and as was highlighted by my interviewees, denoted “lack of will” on the national side to deal with the issues in substance.

¹⁵¹ Author’s interview with CSO representative, Zagreb 5 June 2011.

¹⁵² See chapter four for background.

In relation to the pre-negotiations period, the interviewees stressed that “these bodies seem as very important because they were established by the CLNM, but have no specific competences, nor obligations”.¹⁵³ A European Commission interlocutor in the Delegation in Zagreb confirmed that “the minority councils are an ornament and until they become part of the political life there is no point in their operation, although the EU supports them”.¹⁵⁴ A CSO representative from Zagreb highlighted that because of these critiques from the EU, the NGOs often “react to these formal changes through applying for funds to assist the implementation of these activities that the EU tends to support”.¹⁵⁵ The situation was described in the following manner by the same interviewee:

*“A lot of effort was put into the educating of the members of these councils, while recognising that the role and function of these bodies is not clear. Hence, when I asked the European Commission why they allocate a lot of money enabling these bodies that ultimately do not have a clear function; I received an open and cynical reply. The European Commission confirmed that these bodies are decorum, but as it tried so hard to make the Croatian government to adopt the CLNM, it is expected that we take them seriously. Thus, there is double pretence in this case, both on the side of the EU and the national authorities.”*¹⁵⁶

Even though prior to the official launching of the negotiations on chapter 23 the European Commission deals with the functioning of the councils, in the post-2008 period when the negotiations for EU accession started the issue was sidelined. At the same time, the opening of the negotiations has been assessed in literature as “probably the most significant of the different stages of the accession process [...] [which] creates new situations and new expectations, as both sides begin to take accession seriously and examine all its practical consequences” (Avery and Cameron, 1998 p.27). In the screening report of 2007 on chapter 23 the European Commission repeats the same remark as in the progress report of the same year in terms of the unrecognised role of these Councils by the majority of local authorities and that many of them struggle to obtain premises and funding (EC, 2007b). Even though the screening report mentions them, the European Commission and the authorities did not deal with

¹⁵³ Author’s interview with CSO representative, Zagreb 5 June 2011, Author’s interview with European Commission official, Zagreb, 03 June 2011.

¹⁵⁴ Author’s interview with European Commission official, Zagreb, 03 June 2011.

¹⁵⁵ Author’s interview with CSO representative, Zagreb, 5 June 2011.

¹⁵⁶ Author’s interview with CSO representative, Zagreb, 5 June 2011.

the issue in the negotiations, as was highlighted by my interviewees. At the same time, the issue was not included in the benchmarks in the interim report on the negotiations of chapter 23 issued in March 2011, highlighting the lack of consistency in the requirements (See EC, 2011d). The national strategic documents also do not deal specifically with the role of the local minority councils in the post-2008 period. The 2011 NPAA only mentions the intention to organise seminars for the improvement of the work of minority councils and representatives of national minorities (Government of the Republic of Croatia, 2011c). Overall, the issue was not dealt with in a structured way in the negotiations process, although it was a subject of EU interest and also was supported by substantial financial assistance.

While the European Commission did not streamline the work of the CNMs in the documents related to the negotiations, in the Progress Reports in the post-2008 period the European Commission deals with these bodies. Hence, in 2008 and 2009 the Commission notes that “CNMs are not sufficiently recognised yet as advisory bodies by the majority of local authorities. Moreover, their independence and influence is affected by the fact that they depend on the budget of the town authority or council” (EC, 2008a p.13, EC, 2009a p.14). The Shadow report to the FCNM convention highlights that these institutions did not succeed in the course of their second mandate to position themselves in any of the segments related to decision-making (Center for Peace, 2010). The Shadow Report relying upon reports from members of these councils reiterates the need to amend the legislation for their functioning, however, this is not supported in the European Commission reports. In 2011 the European Commission mentions therefore that support to the local CNMs increased and training was provided for local authorities and the new July 2011 elections which took place with very low turnout (EC, 2011a). Hence, although dealing with the issue formally through the reports, the negotiations for accession were not used for advancing the implementation of the CLNM at the local level through these bodies. Hence, the analysis points to the evident discordance between the progress reports and the negotiating documents although they’re both prepared by the Commission officials, once more highlighting the problem of stipulating clear conditionality in the absence of the *acquis*.

6.4 Negotiating national minority policies in chapter 23

As explained in the introduction of this chapter, the negotiating structure for EU accession was amended in 2005 to include formally the issues related to judiciary and fundamental rights in the negotiations. The expectation of the Commission at the time was among other results, for this chapter to increase the consistency of conditionality in this policy area.¹⁵⁷ Hence, the chapter 23 in the negotiations process was introduced as a result of the lessons learnt in the previous enlargement and in order to set clear standards and benchmarks in relation to the political criteria. Thus, the assessment of its success in achieving these objectives is significant for tackling the research questions of the thesis. This section therefore studies whether this chapter contributed to the development of “clear cut benchmarking” and a common consensus among the stakeholders on conditionality. The potential of this chapter which deals with issues outside of the *acquis* at the time of its launching was not clear due to the former European Commission position that the political criteria (i.e. minority policies) need to be fulfilled prior to the beginning of the negotiations (See Sasse, 2005). Hence, it was argued that on the one hand, the inclusion of this chapter could lower the “threshold for the beginning of accession negotiations [...] in contrast to the one for membership” (Spernbauer, 2007 p.280). It could be the case, on the other hand that the tasks for opening of negotiations remain the same while the conclusion of negotiations would be assessed more strictly (Spernbauer, 2007).

Croatia was the first country that formally negotiated this chapter and is therefore instructive and sets lessons to be learnt both for the other candidate countries and the European Commission. The process of negotiating this chapter in the case of Croatia was quite drawn out because there were delays in the screening of the chapter as well as the opening of the negotiations. The Commission published its screening report in late 2007 and a year later in December 2008 it presented a positive assessment regarding the fulfilment of the opening benchmarks for this chapter. However, in the course of 2008 and 2009 the negotiations on this chapter were not pursued due to Croatia’s insufficient cooperation with the ICTY as well as the bilateral dispute with Slovenia.¹⁵⁸ The negotiations were open in February 2010 and effectively lasted less than one and a half year until the closing of the negotiations in June 2011. Thus, the chapter

¹⁵⁷ Author’s interview with European Commission official, Brussels, 8 December 2010.

¹⁵⁸ See chapter four for background.

was among the last ones to be opened for negotiations and the fulfilment of the benchmarks in relation to this chapter was under substantial pressure before the official target of June 2011, declared by the Croatian government at the time.

The most important opening benchmark in relation to minorities in the chapter 23 was the adoption of an Action Plan for the implementation of the CLNM, which was already recommended in the Progress Report of 2006 and 2007.¹⁵⁹ The 2006 report states “the establishment of an action plan covering all bodies concerned by the CLNM is recommended to ensure the CLNM can be fully implemented” (EC, 2006a). In the next year, the European Commission remarks that there is still no overarching action plan for the CLNM (EC, 2007a). The Action Plan which was delayed since the adoption of the CLNM in 2002 was finally prepared in 2008 as a result of the screening report and the launching of the negotiations (See Government of the Republic of Croatia, 2008a). In this case, “the EU pressure materialised in the adoption of a strategic document; however, it was later shown that the problems in the implementation remained”.¹⁶⁰

The foremost problem with the Action Plan was its preparation and adoption without informing the national minorities. Interviewed stakeholders have highlighted that “the Plan was prepared in the Government as an act to satisfy the demands of the EU, but not the minorities”.¹⁶¹ Furthermore, the Plan was considered confidential until the end of 2009 when it was announced to the public (Center for Peace, 2010). The European Commission officials interviewed on the other hand considered that “the action plan on the CLNM went a little bit wider than what was requested from the EU”.¹⁶² Still, although much demanded, the Action Plan did not bring about tangible results in its implementation in the most problematic areas such as the minority councils, as explained above and the representation of minorities in the administration, which is dealt with in the following chapter. For the concluding of the negotiations the government presented a further Action plan for the period 2011-2013 which deals mostly with issues in relation to the employment of the national minorities discussed in the following chapter (See Government of the Republic of Croatia, 2011a).

¹⁵⁹ This was also confirmed to me by my interviewees in the EC.

¹⁶⁰ Author’s interview with CSO representative, Zagreb, 19 April 2011.

¹⁶¹ Author’s interview with CSO representative, Zagreb, 20 May 2011, Author’s interview with CSO representative, Zagreb, June 21 June 2011.

¹⁶² Author’s interview with European Commission official, Brussels, 8 December 2010.

The role of the new chapter dealing with minority policies chapter and the further “benchmarking” of the process were not considered as significantly assisting in the consistency of conditionality by the stakeholders. The European Commission officials interviewed considered that “it is difficult to pinpoint specific improvement”, though it was argued that “it has possibly led to a more responsible attitude at the highest level of Government”.¹⁶³ The national officials working directly on chapter 23 considered that “the work on this chapter was one of trials and errors - the European Commission waited for us to come up with a solution, present it and if we guessed it fine, if not we had to re-do the exercise”.¹⁶⁴ Stakeholders that participated in the negotiations also argued that “the European Commission was not going as far as advising Croatia on how to implement certain policies. It just showed problematic areas and then the government office would produce a document which obliges the state administration bodies to take actions”.¹⁶⁵ In this manner, the negotiating documents were compared to the progress reports, since “they share the same problem as they only touch the surface and are not substantial”.¹⁶⁶ These conclusions therefore confirm the findings of a recent analysis of the progress reports in relation to minority policies in the region which concluded that “while the space allocated to minority rights in the Reports has progressively increased, this has generally not been reflected in the quality of its content” (Bokulić and Kostadinova, 2008 p.18).

This conclusion is also supported when examining the benchmarks presented by the European Commission in the interim report on the negotiations with respect to the protection of minorities (EC, 2011d). These for example have included requirements that Croatia improves the protection of human rights or strengthens the protection of minorities (EC, 2011d). The benchmarks therefore confirm my interviewees’ remarks that “the European Commission influence is still limited to policy documents and there is no genuine interest among the EU to deal with implementation of minority legislation”.¹⁶⁷ These assessments are not surprising having in mind that in the course of the negotiations in Croatia two

¹⁶³ Author’s interview with European Commission official, Brussels, 8 December 2010.

¹⁶⁴ Author’s interview with a representative of the Ministry of Justice and a member of the negotiating team, Zagreb, 24 May 2011.

¹⁶⁵ Author’s interview with researcher, Zagreb, 21 April 2011.

¹⁶⁶ Author’s interview with civil servant in the Ministry of administration, Zagreb, 02 May 2011.

¹⁶⁷ Author’s interview with researcher, Zagreb, 21 April 2011.

action plans were prepared on the implementation of the CLNM, which were not accompanied by substantive changes in the most difficult policies such as the functioning of the councils, or the representation of minorities in the public sector, the latter of which is the focus of the following chapter. Similarly, it was highlighted that the negotiations touched only the formal level of legislative change, institutional set up and the endless institutional capacity building through trainings etc.

The CSOs were most critical of the way the negotiations were managed in terms of the late opening of the negotiations and the lack of transparency in the negotiations. First, “the late opening of the negotiations in this chapter was considered to be a mistake” by CSO representatives.¹⁶⁸ It was commonly argued that if the European Commission considered that the Copenhagen criteria need to be fulfilled for the launching of the negotiations, “then this criterion should have been upheld and the negotiations should have been opened when the benchmarks for chapter 23 would have been met”.¹⁶⁹ At the same time, the late opening of this chapter in the negotiations had significant implications over the possibility of bringing about substantial results in terms of implementation. Even though the European Commission announced that the implementation would be monitored in the case of Croatia, it was pointed that “for many of these policies implementation cannot be monitored because the mechanisms were set up in the last 8 months, thus, it is impossible to expect results”.¹⁷⁰ Lastly, the opening of the negotiations in this chapter a year and a half in advance of the announced end of the negotiations increased the political pressure for concluding the negotiations and therefore one of my interviewees claimed that “for numerous indicators implementation cannot be discussed”.¹⁷¹

The second element, subject to criticism in terms of the impact of the negotiations on the enforcement and application of conditionality, was the lack of access of the public and especially CSOs to the negotiating positions and the EU benchmarks. “Minority issues were not visible sufficiently in chapter 23 – the positions were not public and this was supposedly at the request of the Commission”.¹⁷² This was a practice noticeable in the Eastern enlargement as well, especially in the cases of Poland and Hungary (Brusis and Emmanoulidis,

¹⁶⁸ Author’s interview with CSO representative, Zagreb, 06 June 2011.

¹⁶⁹ Author’s interview with CSO representative, Zagreb, 06 June 2011.

¹⁷⁰ Author’s interview with CSO representative, Zagreb 06 June 2011.

¹⁷¹ Author’s interview with CSO representative, Zagreb 06 June 2011.

¹⁷² Author’s interview with CSO representative, Zagreb, 19 April 2011.

2000). Some of my interviewees also linked the lack of access to the negotiating documents as to the role that minorities had in the negotiations. “The minorities stayed on the side and are not too much in the public – the minority segment is isolated from the mainstream.”¹⁷³ Similar conclusions have been made in relation to the last enlargement, for example in terms of the involvement of local self-government in the negotiations of regional policy by Hughes et al (2005). In light of these criticisms of the management of the negotiations CSOs in Croatia in the first half of 2011 put forward two opinions on the negotiations with reference to chapter 23 in which it was argued that Croatia has not successfully conducted the reforms in this chapter for the ending of the negotiations process (2011a, 2011b). In February 2011 the CSOs publicly and in discussions with the European Commission demanded that “the results of the negotiation process with the EU be urgently publicized, with emphasis on negotiated exemptions and adjustment periods”(2011a). The negotiating positions and the benchmarks were made public after the end of the negotiations in the summer of 2011, when there was no possibility for consultation.

6.5 Conclusion

This chapter has examined the minority conditionality in Macedonia and Croatia in the post-2005 period. Building upon the discussion from the previous chapter which dealt with the period between 1997 and 2005 and identified the lack of consistency in the European Commission conditions, the objective of this chapter was to examine whether we can trace a more structured and consistent approach in EU conditionality in relation to minority policies post-2005. In 2004/2005 both countries became candidates for EU accession and the European Commission launched its new approach with the chapter 23, streamlining minority policies in the accession negotiations, rather than treating them as a part of the political criteria for accession. At the same time, the European Commission introduced the benchmarking process in the relations with the candidate countries with the purpose of improving the clarity of the conditionality. The expectation of this new approach was a more thorough application of conditionality in relation to minority policies, among other elements.¹⁷⁴ Hence, this chapter evaluated whether in the post-2005 period these new instruments contributed to overcoming some of the problems identified in the previous

¹⁷³ Author’s interview with researcher, Zagreb, 21 April 2011.

¹⁷⁴ This was confirmed by all of the EC officials interviewed.

chapter, with special relevance of the case of Croatia which is the first country that negotiated under this new framework. The chapter therefore studied all the research questions presented in the introduction by looking at the development and consistency of conditionality in the two case studies as well as the implications for the democratic consolidation.

The empirical analysis of the chapter was divided in two sections: examination of the use of the FCNM as a benchmarking tool by the European Commission and the use of national legislation in the benchmarking for minority policies. In relation to the former, the chapter showed that in the post-2005 period there is still no consistent use of the FCNM as a benchmark by the European Commission. In the case of Macedonia, it has been denounced by the national government in terms of its usefulness because the national legislation provides more advanced protection of national minorities than the protection by the FCNM. In the case of Croatia, the European Commission fleetingly uses the FCNM and although there was potential to use it in the negotiations for EU accession this was not the case. As a result, both on the basis of the findings of the previous chapter and the analysis of the post-2005 period, it can be concluded the EU, especially the European Commission has not moved in the direction of structured use of the FCNM in substantiating EU conditionality.

In terms of the use of national legislation as a tool of EU conditionality the chapter dealt with two major policies in both countries – the law on languages in Macedonia and the establishment and functioning of the local Councils for national minorities in Croatia. The law on languages in Macedonia illustrates the role domestic politics plays in conditionality and its bottom-up dimension, which has important implications for its analysis and the theoretical contribution of the thesis, discussed in the conclusion. It also highlights the way in which national actors can choose to introduce legislation and policies at the national level, which at a later stage can become part of EU conditions. Moreover, the actors involved both at the EU level and national authorities had differing views of the inclusion/non-inclusion of this law as a condition of EU accession, highlighting clearly the existing lack of consensus between and within these two groups of stakeholders.

The analysis of the establishment and functioning of the local minority councils in the case of Croatia illustrated the lack of consistency in the EU's approach to minority conditionality in this specific policy. While prior to the start of the negotiations the European Commission dealt in detail with the functioning

of the councils, in the negotiations this issue was not tackled. At the same time, there is an evident discordance between the regular Progress Reports and the negotiating documents in relation to dealing with the functioning of the Councils for national minorities. Thus, the negotiations were in a way a missed opportunity for advancing this specific policy, although literature has commonly shown that the EU's influence in supporting policy change and implementation is the highest during the accession negotiations.

Lastly, the chapter examined whether the further formalisation of minority policies has contributed to the consistency of the conditions and the requirements for their fulfilment. The analysis of the benchmarks in relation to minority policies in the European Commission screening documents and negotiation reports shows that they share the same lack of follow up identified in the previous chapter. It may be too early to assess, but the stakeholders at the national level both from the state institutions and the CSOs were highly critical of the chapter. First, the late opening of the negotiations in this chapter did not provide sufficient time for dealing with the issues concerned and the benchmarks and indicators were not considered to have added clarity to the minority conditionality. Second, the confidentiality of the negotiations process was considered as an impediment for the effective participation of minority organisations and external stakeholders in the negotiations.

These criticisms of the conditionality process could have potentially been recognised within the European Commission itself since, following the end of the Croatian accession negotiations in October 2011, the European Commission announced that the first and the last chapter to be opened and closed in the upcoming accession negotiations will be Chapter 23 - Judiciary and Fundamental Rights and Chapter 24 - Justice, Freedom and Security, which will be continuously monitored based on specific benchmarks and action plans (EC, 2011b). The next chapter however will deal with a policy in which there were specific benchmarks and action plans for fulfilment, the representation of minorities in the public sector and highlight the potential caveats of this approach as well.

7. Case study: representation of minorities in the public sector

7.1 Introduction

This last empirical chapter of the thesis is a case study of the representation of minorities in the public sector as an element of EU conditionality in Macedonia and Croatia. In the course of the fieldwork, this policy was most commonly singled out as an example that stood at the core of EU's conditions in relation to minority policies in both countries. Furthermore, this policy was not been an element of EU conditionality in the previous enlargement and as such contributes significantly to the originality of the thesis. The analysis that follows complements the discussion of the previous two chapters which highlighted the lack of consistency, difficulties in stipulating causal relationships and the diverse understandings of the conditions is both at the EU and national level. In light of these findings the objective of this chapter is to examine in detail a similar policy in both case countries in order to draw more context specific conclusions. In this sense, the chapter in part addresses all the research questions presented in the introduction, while nevertheless focusing on the consistency of conditionality, role of domestic actors and the dynamic relationship between conditionality and democratisation. The chapter therefore tests the findings of the previous two chapters on a micro-level by looking closely into the operation of the same policy in both case studies.

While representation of minorities from a broad perspective includes political participation as well as representation/employment in the administration, this chapter deals solely with the latter aspect, which in international law is commonly referred to as 'special measures' or 'affirmative action' (See Bokulić and Kostadinova, 2008).¹⁷⁵ According to Kymlicka (1995) "in so far as these rights are seen as a response to oppression or systemic disadvantage, they are most plausibly seen as a temporary measure on the way to a society where the need for special representation no longer exists" (p.141). This obligation has been supported extensively by EU conditionality in the area making this issue one of the most important elements in the accession process of both case studies. In addition to its prominence in the EU criteria, this policy is of high interest to the domestic actors, specifically organised minority interests. Lastly,

¹⁷⁵ Political representation of the minorities/non-majority communities in both countries is considered relatively well organised and has not been subject to EU conditionality.

Kis (2002) posits that “access to public institutions is a means for them [minorities] to gain symbolic recognition as constitutive members of the political community” (p.227). From this perspective, it also carries increased significance for the objective of democratic consolidation as was explained in chapter three.

The under-representation of minorities in the administration has been a feature of the post-communist period in the two cases due to a variety of reasons. In Macedonia, the non-majority communities, especially the Albanian community as the biggest, in the communist period and in the early 90s have been underrepresented in the administration (see figures in next section). In fact, “Albanians have been forced to channel their energies into this new private sector because of their traditional exclusion from jobs in the public administration” (Knaus et al., 2004 p.105). In Croatia, the under-representation of minorities has been especially prevalent among the largest Serb minority as a result of the war and the mass displacement. Since the country’s institutions were re-constituted during the 90s when a significant number of the Serb population was displaced, the representation of the Serb minority in the administration has been low as well. Thus, in both countries representation in the administration has strong implications for the sense of “ownership” that under-represented groups might have in the state (Bieber, 2008b).

Macedonia and Croatia are obliged through national legislation to ensure the representation of minorities in their public sectors. In Macedonia, the policy was a part of the OFA and in Croatia it was streamlined through the CLNM, both of which were examined in the fifth chapter of this thesis. These national legal obligations have been a core element of the EU accession process stipulated in the EU official documents such as the European Partnerships and Progress Reports. Hence, the EU primarily through the documents of the European Commission constantly stipulated the proportional representation of minorities in the local and regional self-government units, in the State administration and judicial bodies and in bodies of public administration as a key priority in Macedonia and Croatia (Council, 2004, 2006a, 2006b). Moreover, this policy was a key element of the opening and closing benchmarks for the negotiations with Croatia in the newly established chapter in the EU negotiations dealing with judiciary and fundamental rights, examined in the previous chapter (EC, 2007b). As such, it has become one of the core formal conditions for EU membership during the negotiations for EU membership.

At the same time, the fulfilment of this condition in both countries has been hampered by numerous problems. While in Macedonia the policy has been formally implemented by increasing the number of almost exclusively Albanian employees in the public sector, it has been accompanied by critiques on the manner of implementation and neglect of smaller non-majority communities. In Croatia, the implementation of this policy was a matter of constant delay and critiques especially during the accession negotiations. Even though the negotiations were concluded at the end of June 2011 and the Croatian accession treaty was signed, the progress on this benchmark remained slow and incomplete. In addition to its current significance, the policy is likely to stay on the agenda in the forthcoming years in both countries. An interlocutor from the European Commission highlighted that in Macedonia this policy will be a core element in the upcoming negotiations process, “because the Commission since the beginning has been supporting it financially and we [the European Commission] will concentrate on this once the negotiations start”.¹⁷⁶ In the accession document on chapter 23 the European Commission recommends that “Croatia is [...] to ensure targets are met and a tangible improvement in the level of employment of the national minorities in the public sector achieved” (European Union Common Position, 2011 p.17). Hence, the policy is likely to stay on the national and EU agenda for the years to come.

Using representation of minorities/non-majority communities in the public sector as an example, this chapter examines the application and evolution of EU conditionality in the two case studies. Similarly as the other chapters, the analysis is based on process-tracing of official documents and fieldwork interview data for the purpose of illustrating the complexity of EU conditionality in relation to the political criteria and the significant role domestic politics for the outcome of conditionality.¹⁷⁷ Studying this policy the chapter underlines the potential for increasing politicisation of EU political criteria due to their flexible nature and the

¹⁷⁶ Author’s interview with European Commission official, Skopje, 21 January 2011.

¹⁷⁷ The chapter does not take a normative stance on minority representation policies, but focuses on the application and problems of the study of EU conditionality. For a discussion the justification and potential problems of equitable representation policies in democratic consolidation see DASKALOVSKI, Z. *The Macedonian Integration Model: Minorities and Affirmative Action Policies* In: MARIA, G., ed. *Inclusion Unaffordable? The Uncertain Fate of Integration Policies and the Demonisation of Minorities and Migrants in Central and Eastern Europe 2009* Riga. Centre for Public Policy Providus.

subjective approach in their evaluation. This is so, because “the political accession criteria remain vague and fail to depict what the EU really wants from new members when it comes to the functioning of their democracies” (Haukenes and Freyberg-Inan, 2012 p.20). The chapter thereby supports Sasse (2009) claim that “a legal change can hide deeper political or societal problems which might, in fact, have become ingrained in the context of the EU’s involvement” (p.28).

7.2 Background to the policy in Macedonia and Croatia

The equitable representation of communities in the administration in Macedonia is guaranteed in the section 4.2 of the OFA. The post-Ohrid amended Constitutional article ensures that “equitable representation of persons belonging to all communities in public bodies at all levels and in other areas of public life.”¹⁷⁸ In order to implement this provision, it was agreed that: “the Assembly shall adopt by the end of the term of the present Assembly amendments to the laws on the civil service and public administration to ensure equitable representation of communities in accordance with Section 4.2 of the Framework Agreement”.¹⁷⁹ As outlined in former chapter, all of the laws, including the ones necessary for the implementation of this policy were adopted in the first couple of years after the OFA creating the legal prerequisites for the policy.

The rationale behind this policy was the evident statistical underrepresentation of minorities in the state sector. In 2001, for example 84.5 per cent of those employed were ethnic Macedonians compared to 7.5 per cent Albanians, whereas 20 per cent of those registered as unemployed were Albanian.¹⁸⁰ Brunnbauer (2002) has stressed that “Albanians remained underrepresented in all fields of the formal economy, which cannot be explained only by their lower qualifications and their more rural life-styles but is more likely the result of ethnically discriminatory recruitment patterns” (p.13). Thus, the OFA and the subsequent constitutional amendments in essence required the country

¹⁷⁸ Text of the Ohrid Framework Agreement available at the website of the Sector for implementation of the Ohrid Framework Agreement, Government of the Republic of Macedonia www.siofa.gov.mk [Accessed 09 October 2009].

¹⁷⁹ See GOVERNMENT OF THE REPUBLIC OF MACEDONIA 2005. Answers to the Questionnaire for the preparation of the European Commission's Opinion on the application of the Republic of Macedonia for membership of the European Union - Political Criteria. Government of the Republic of Macedonia.

¹⁸⁰ Mirjana Najcevska, [Манипулација] Manipulation, 8 May 2001 Utrinski vesnik www.utrinski.com.mk.

to remedy this situation and achieve equitable and adequate representation of non-majority communities at all levels of the administration.

There was widespread agreement among my interviewees who participated in the drafting of the OFA that that even though the equitable representation was relatively easy to negotiate in the Agreement, it was expected that its implementation would encounter major difficulties. For example, a former vice prime Minister for EU affairs interviewed for this thesis pointed out that “at the time of negotiating the OFA everyone was aware that this was a not a simple political decision, but rather an overhaul of the administration.”¹⁸¹ In academic literature, this policy was also considered as one of the most contentious ones of the OFA and was bound to encounter more problems than the political representation (Ilievski, 2007, Bieber, 2005a). The problem is even more evident having in mind the high percentage of state employment in Macedonia and the general high level of unemployment in the country which is on average around 32% with youth unemployment at a staggering 53% (ILO, 2012). As a result, research has concluded that this policy will need to be implemented “through the natural attrition of ethnic Macedonian employees and a program of positive discrimination in favour of Albanians in the public sector recruitment over many years” (Knaus et al., 2004).

In Croatia the right to representation of minorities in the administration is guaranteed with the 2002 CLNM. The inclusion of such a provision in the CLNM in the context of Croatia’s democratisation process is of high importance primarily because of the legacy of the overrepresentation of Serbs in the employment sector in the Yugoslav times (Petričušić and Žagar, 2007). Article 22 of the CLNM foresees that:

*Minority representation shall be ensured in government and judiciary bodies in compliance with a special law, with allowance to be made for the share of a national minority in the total population in the area where a government or a judiciary body has been formed, as well as for the acquired rights.*¹⁸²

¹⁸¹ Author’s interview with former vice prime minister for EU affairs, Skopje, 23 December 2010.

¹⁸² Constitutional Law on the Rights of National Minorities, Official Gazette no. 155/2002, available at: http://www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation_Constitutional-Law-on-the-Rights-NM.pdf [Accessed 04 May 2010]

The rationale behind this policy is to be found foremost in the practices of the first decades of independence, when the majority of public servants of Serb ethnic origin were forced to leave their posts (Petričušić 2004 p.6, see also Cohen, 1997). Thus, the under-representation of minorities in Croatia is especially prevalent among the largest Serb minority as a result of the war and the re-constituting of the country's institutions in 90s when a major part of the Serb population was displaced (on legacies of the 1990s see Jović and Lamont, 2010). This official policy of 'nationalising the state' "was further reflected in the state administration, courts, police, state media, and so on, where priority was given to Croats and many Serb employees were removed" (Zakošek, 2008p. 598). A Human Rights Watch report in 2003 underlined that "employment discrimination on ethnic grounds is difficult to prove since unemployment among [... however...] a number of returnees told Human Rights Watch, however, that they were explicitly told that they could not get a job because of their ethnicity" (HRW, 2003 p.53). Moreover, especially in the areas affected by the war, the employment in the state institutions is the only option due to the economic devastation (Gjenero, 2006b).

7.3 Equitable representation of non-majority communities as an EU condition in Macedonia

The origins of the condition related to the equitable representation are in the OFA and the SAA reports, although stronger emphasis to this policy area has been given in the Progress Reports since 2005. The need for achieving equitable representation was clearly highlighted in the Analytical Report of 2005 and has been continuously raised as an issue of concern by the Commission (EC, 2005a). In 2006, a short-term and mid-term priority was included in the European Partnership requiring the adoption and implementation of a medium-term strategic plan for equitable representation in the public administration (Council, 2006b). In 2008, this priority of the European/Accession partnership was repeated with an emphasis on the need of its upgrading and implementation (Council, 2006a). Being a part of the European/Accession partnerships, equitable representation was essential for the assessment of the country progress in the context of EU conditionality. The document analysis therefore confirms my interviewees' claims, that "despite the likely problems in the implementation,

unlike other international organisations, the EU supported this policy from its very beginning both financially and institutionally”.¹⁸³

The obligations related to equitable representation are also found in national documents. The strategy is part of the Action Plan for European Partnership 2005 with a deadline of mid-2006 (Government of the Republic of Macedonia, 2006b). The 2006 NPAA undertakes the obligation for adoption of a Medium-Term Strategy for Adequate and Equitable Representation of the members of the Communities in the Public Administration (Government of the Republic of Macedonia, 2006a). Bearing in mind the political sensitivity of the issue, the likelihood of adopting such a medium-term strategy within half a year prior to the parliamentary elections scheduled for July 2006 was unlikely at the time. One can compare this case to the law on the use of languages obligation, as an activity taken up by an outgoing government largely aware that it would not be able to fulfil it by the end of its term, examined in the previous chapter. However, unlike the law on languages, which was taken off the national (and EU) agenda for a couple of years, this strategy was adopted in January 2007 by the new government as an obligation for the country’s accession process (see Government of the Republic of Macedonia, 2007c). Thus, in this early period the political institutions in Macedonia responded formally with the adoption of the required documents for the implementation of this policy.

In fact, it was argued that “this strategy and the policy of representation in the administration would have topped the agenda of any of the Albanian parties in the government”.¹⁸⁴ The EU supported the preparation of this strategic document with an EU funded project of technical assistance; however “the preparation was accompanied by problems because of different understanding of the policy by international and national stakeholders”.¹⁸⁵ One of the members of the group preparing the document explained that “an EU member state expert was involved in the preparation of the strategy, but, the first draft of the document did not correspond with the national legislation, so representatives of

¹⁸³ Author’s interview with former vice prime minister for EU affairs, Skopje, 23 December 2010. Same is confirmed in LETSCHERT, R. 2005. *The Impact of Minority Rights Mechanisms*. TMC Asser Institute and Cambridge University Press, The Hague. P. 271, note 74.

¹⁸⁴ Author’s interview with senior civil servant in the Secretariat for European Affairs, Skopje, 22 December 2010

¹⁸⁵ Author’s interview with civil servant from the Secretariat for European Affairs, Skopje, 23 December 2010.

the national institutions revised the document”.¹⁸⁶ However, the strategy was adopted and was supported strongly by DPA, the Albanian party in government at the time. Despite these encountered problems, since 2008, it has been considered as a basis in national documents for the further promotion of equitable representation of the non-majority communities (Government of the Republic of Macedonia, 2008b). Furthermore, the 2008 NPAA is the first Government document which refers to the allocation of funds for the implementation of the strategy and undertakes an obligation to report on its implementation on a quarterly basis (Government of the Republic of Macedonia, 2008b). Overall, it is clear that through the EU and national documents the policy was formally implemented at the national level, since the Strategy was adopted and supported by financial means.

7.3.1 Representation in the police – relative success

From 2008 and onwards, the European Commission pressure in Macedonia with respect to the equitable representation was primarily directed on the police and the armed forces. This is illustrated both in the EU and national strategic documents which set targets exclusively in relation to police reform following the adoption of the new Law on police. The adoption of this Law was also an element of EU conditionality since the country was granted a candidate status and was also part of the 2006 Accession Partnership (Council, 2006b) which in the following Accession Partnership was transformed in a priority to ensure the implementation of the Law on Police (Council, 2008b). Moreover, in the 2008-2009 period the communication between the country and the European Commission focused solely on the so-called “key priorities” of the 2008 Accession partnerships which included the police reform, but not equitable representation in general (Council, 2008b), further confirming the focus on the equitable representation in the police.¹⁸⁷

In response to these EU ‘stimuli’ in 2008, the Government adopted a document with activities for the implementation of the most important

¹⁸⁶ Author’s interview with civil servant from the Secretariat for European Affairs, Skopje, 23 December 2010.

¹⁸⁷ There were activities directed towards equitable representation in the police prior to 2006, through trainings conducted by OSCE and European Agency for Reconstruction (EAR), see RAGARU, N. 2008. *The Former Yugoslav Republic of Macedonia: Between Ohrid and Brussels*. In: BATT, J. (ed.) *Is there an Albanian Question*.

recommendations from the Progress Report immediately after its publication. This document, called *Blueprint on the Realisation of the Recommendations in the European Commission Progress Report on the Republic of Macedonia 2008* was assessed positively by the Commission.¹⁸⁸ In terms of the equitable representation it puts forward specific targets for minority representation in the police forces for 2008, 2009 and 2010 through the increase of 1.5% in 2008 and 1% in the following two years (Government of the Republic of Macedonia, 2008a). These targets are the most precise benchmarks in relation to equitable representation which are to be found in any of the European or national documents. My interviews with EU officials confirmed this by underlining that “the equitable representation was chosen as a suitable benchmark due to its potential of quantification”.¹⁸⁹ Due to this focus on the police forces it is not surprising that the Contribution to the Progress Report which the Macedonian government adopted in June 2009 also focuses solely on the equitable representation in the police structures (Government of the Republic of Macedonia, 2009b). As a result, by 2009 the number of minority employees in the Ministry of Interior had risen to 20.33% in comparison to 2006 when it was 14.9% and 2000 when it was 8% (Ragaru, 2008, Daskalovski, 2009).

In addition, interviews with European officials in Brussels have pointed to the equitable representation in the police as “one of the success stories of the impact of the EU in Macedonia”.¹⁹⁰ My interlocutors at the national level largely confirmed this observation and considered that the EU pressure brought results in relation to the equitable representation in the police.¹⁹¹ The latter have emphasised that the main reasons behind the relative success in this area have been clear benchmarks which were given to Macedonia as well as the parallel reforms taking place for the purposes of the visa liberalisation process (On the police reform as part of the visa liberalisation process see Trauner, 2011). The same remark was made by a representative of a think tank working on these issues underlining that “the visa liberalisation process assisted in the police

¹⁸⁸ Author’s interview with European Commission official, Brussels, 11 October 2010.

¹⁸⁹ Author’s interview with European Commission official, Brussels, 11 October 2010.

¹⁹⁰ Author’s interview with European Commission official, Brussels, 11 October 2010.

¹⁹¹ Author’s interview with CSO representative, Skopje, 23 December 2010.

reforms, including the minority representation”.¹⁹² The link with the visa liberalisation process in relation to the effectiveness of conditionality largely confirms the findings of recent research. Trauner argues that “the key to understanding the compliance of Macedonia, whose membership prospect is less certain or even questionable, is to take into account policy conditionality in addition to membership conditionality” (Trauner, 2009b p.777). His conclusions however, are limited to the justice and home affairs sector, where the Commission has at its disposal clear rules and *acquis*.

Still, the equitable representation in the police has not been immune to critiques. Research has argued that in this field, the efficiency of international programmes was prioritised and the people that joined police ranks as minority police officers were extremely badly trained (Ioannides and Collantes-Celador, 2011). At the same time, the question also remains as to the potential discriminatory nature of these provisions, which have already been noticed in the EU, notably in Northern Ireland, as the common EU reference point on these policies. According to the Recommendations of the Patten Commission on Recruitment in the police in Northern Ireland, a pool of qualified candidates was to be created, out of which an equal number of Catholics and Protestants should be employed (Patten, 1999). Due to potential clash between these mechanisms and the Employment Equality Directive, the UK has negotiated an exemption from the latter, although it allows for positive action measures. According to De Schutter (2010), “this illustrates how, unless EU anti-discrimination law is reformed, policies aimed at the inclusion of certain minorities may be discouraged, or even made impossible, under the existing legal framework” (p.31). The situation in Macedonia on many levels mirrors these problems, furthermore, as will be shown later it has resulted in neglect of the other smaller communities and has amplified the importance of ethnicity as the sole cleavage.

7.3.2 Implementation of the policy at the central level – burdened with problems

Lack of transparency and party appropriation of the policy

The dominant assessment of a “success story” of the representation in the police, however, is not widely shared in relation to the overall project of equitable representation. My interlocutors highlighted that these were in essence

¹⁹² Author’s interview with CSO representative, Brussels, 13 October 2010.

separate processes managed by different institutions – while the police reform was managed through the Ministry of Interior; the overall policy was implemented by the Secretariat for the implementation of the OFA at the central level in the Government. Since its establishment the latter has been headed by an Albanian vice prime minister in charge of the policy and was allocated funds for managing the hiring process for the purposes of equitable representation. The significance of the Secretariat in the hiring process was constantly emphasized during the interviews for this thesis. An EU official in Skopje called it “the biggest employment agency in the country with approximately 300-400 employments per year. The Employment Agency can’t do what this Secretariat is doing.”¹⁹³ The figures reflect this progress, as a briefing paper from a local think tank has recently highlighted that data from the Central Registry of Civil Servants depict a commendable increase in the number of ethnic Albanians in the civil service from 5.61% in 2004 to 24.18% in 2012 (Risteska, 2012).

Despite this statistical increase, the policy at the same time has been criticized for the lack of transparency in its implementation and neglecting the needs of the smaller communities. In terms of the former, the lack of reliable information on the number and nature of employments has been of primary significance. In a commentary on the effective participation of minorities in the public life, the Advisory Committee of the CoE highlighted that “comprehensive data and statistics are crucial to evaluate the impact of recruitment, promotion and other related practices on minority participation in public services. They are instrumental to devise adequate legislative and policy measures to address the shortcomings identified” (CoE, 2008). The national government in 2007 had already highlighted that “the adopted Strategy [...] envisages the possibility for setting up a state authority in charge for processing data on the employees in the public sector. Presumably the State Statistical Office will be in charge” (Government of the Republic of Macedonia, 2007b p.29).

In addition, a significant number of employees hired for the purposes of the equitable representation policy have been paid from the state budget, while not working in practice. The media reported on this phenomenon extensively and in 2009, the Vice Prime Minister responsible for these recruitments recognised the problem (Trajkovska, 2009). In my interviews it was estimated that around 1,000 people have been hired to boost statistics, and are paid from the state

¹⁹³ Author’s interview with European Commission official, Skopje, 21 January 2011.

budget, but are not formally working. A report of the International crisis Group in 2010 highlighted that “hiring ethnic Albanians also risks becoming a *box ticking exercise* in which many new employees have no clearly defined job description, office or equipment” (ICG, 2011 emphasis added). In addition, the Brussels correspondent for Macedonia has argued that the European condition for equitable representation has been turned into a farce (Jovanovska, 2009). The problem has also been recognised by the European Commission underlining that “a large number of newly recruited civil servants received salaries, even though they were not assigned any tasks or responsibilities” (EC, 2011c p.20). Recently, the Committee of Ministers in its Resolution on the FCNM implementation warned that the manner in which this policy is implemented

does not help to increase the effective participation of persons belonging to national minorities in the public sector [... and...] could have a negative impact on the quality and consistency of services provided by the civil service and foster resentment in society (CoE, 2012).

Furthermore, the Secretariat, as the responsible institution for this policy has been headed by Albanian political parties in power enforcing party membership as an additional criterion for these recruitments. A University professor interviewed for this research explained that Albanians who are not members of the ruling Albanian party could not get into the administration.¹⁹⁴ Bieber has argued that the dominance of political parties in the interethnic relations marginalizes any non-party based interests, and also results in party, rather than ethnic representation, ultimately leading to inter-ethnic discrimination (Bieber, 2008b). The party-based appointments in the civil service have been a general feature of the development of the Macedonian state and of the Western Balkans in general. As a result, in 2010 the Ombudsman concluded that while discrimination is practiced on the basis of gender, national, religious and political orientation, the last one is the most prevalent and difficult (Ombudsman, 2010). In response, in its latest priorities and benchmarks to the Government, the European Commission has recommended “systemic coordination [which] should ensure that the Programme does not favour principle of equal representation, over the principle of merit based recruitment and that it will respond to real staffing needs identified by the respective administrative bodies” (Government of the Republic of Macedonia, 2011a p.5).

¹⁹⁴ Author’s interview with University professor and former governmental minister, Skopje, 22 February 2011.

The problems accompanying the policy on the ground have been mirrored in the delays in reporting on the implementation of the Strategy as highlighted by national and EU interviewees.¹⁹⁵ Solely conducted on the basis of statistical increase in employment at the central level, the reporting on the Strategy has not been accompanied by a thorough assessment of its impact. In any case, “the EU assesses the success in relation to minorities through numbers and mainly through employments”, highlighted a senior civil servant.¹⁹⁶ An official directly working on this issue also mentioned that “for years there have been no sanctions against the state bodies which do not respect the equal representation principle”.¹⁹⁷ Lastly, criticism was put on the requirement to complete targets within a short period of time. An official working on the issue stated that “they (read: the EU) put pressure on the Government and later they stepped back and required a merit based approach – it is impossible to bring about such results in just two years”.¹⁹⁸ A representative of the Commission, on the other hand, argued that “we (i.e. the Commission) have been waiting for a report on the measures taken for years, however, have not received one, despite the high numbers of formally employed members of the communities”.¹⁹⁹

Thus, the manner in which the policy has been implemented contradicts the objective for creating a strong and functioning bureaucracy, which has been another aspect of EU conditionality, more recently included in the context of EU accession. The 2009 report of the SIGMA/OECD explains that “this well-intended tool, developed for putting into practice the principle of equal representation of the various minorities, quite often enters into contradiction with the merit system, because it provides additional room for partisan-influenced recruitment” (SIGMA, 2009 p.2). The 2012 Progress Report underlined that “respect for the principle of merit-based recruitment together with the principle of equitable representation needs to be ensured” (EC, 2012b p.10). At the same time, the EU in its dialogue with Macedonia established a separate working committee on the

¹⁹⁵ Author’s interview with civil servant from the Secretariat for European Affairs, Skopje, 23 December 2010, Author’s interview with European Commission official, Skopje, 21 January 2011.

¹⁹⁶ Author’s interview with senior civil servant in the Ministry of Foreign Affairs, Skopje, 07 March 2011.

¹⁹⁷ Author’s interview with civil servant from the Secretariat for European affairs, Skopje, 23 December 2010.

¹⁹⁸ Author’s interview with senior civil servant in the Ministry of Foreign Affairs, Skopje, 07 March 2011.

¹⁹⁹ Author’s interview with civil servant from the Delegation of the European Commission in Skopje, 27 January 2011

reform of the public administration in which these issues were being discussed; however “in practice there has not been a major breakthrough in terms of reconciling the two objectives”.²⁰⁰

European officials interviewed for this study agreed that “the pressure for equitable representation had been instrumentalised in the domestic context, but underlined that the manner of implementation was dependent on the national authorities”.²⁰¹ OSCE employees who are highly involved in this issue were critical of the implementation of this policy, still recognising that “the institutional system which has been put in place cannot be stopped immediately”.²⁰² National officials, on the other hand, linked the problems to the European Commission’s requirements for statistical increase in the representation. It was argued that “there is abuse of conditionality in this specific policy area”.²⁰³ The policy which before 2005 contributed to getting a positive *avis* has been misused and has had negative by-products such as excessive hiring based on party affiliation.²⁰⁴ Overall, all the stakeholders recognised the problem, however, the European Commission and the national officials mutually found the other side responsible for the perpetuation of this policy.

The differences in the understanding of the policy escalated in 2011 when the European Commission assessed in its report for the first time that the overall number of civil servants from the non-majority ethnic communities matches the demographic structure, however “the trend of recruiting employees from these communities on a quantitative basis without regard to the real needs of the institutions continued” (EC, 2011c p.10). The recognition at the EU level of the largely completed process of equitable representation in the Progress report of 2011 stirred a lot of debate at the national level, since the policy could no longer be interpreted as a requirement for EU accession. The Vice Prime Minister responsible of the policy dismissed the data from the EU and announced new employments as part of the equitable representation policy (Popovska and Trajkovska, 2011). Similarly, the activities for the fulfilment of this policy have

²⁰⁰ Author’s interview with civil servant from the Secretariat for European Affairs, Skopje, 23 December 2010.

²⁰¹ Author’s interview with Commission official, Brussels, 11 October 2010.

²⁰² Author’s interview with OSCE representative, Skopje, 19 January 2011.

²⁰³ Author’s interview with senior civil servant in the Ministry of Foreign Affairs, Skopje, 07 March 2011.

²⁰⁴ Author’s interview with high level civil servant from the Secretariat for European Affairs, Skopje, 22 December 2010.

remained part of the NPAA in 2012 and the policy is interpreted in the light of the EU accession process (Government of the Republic of Macedonia, 2012).

Although in 2011 the Commission determined that the number of civil servants matches the demographic structure, because of the evident discontent among the Albanian ruling parties, the assessment in 2012 was toned down. In 2012, the Commission noted that “the overall proportion of civil servants from non-majority communities is satisfactory”, underlining that there is a problem in distribution among ministries and at various levels in the civil service (EC, 2012b p.17). At the same time, in July 2012, the Committee of Ministers on the implementation of the FCNM assessed that “persons belonging to the Albanian, Bosniak, Serb, Turkish, Vlach and Roma minorities are still underrepresented” (CoE, 2012). In this sense, the differing assessments between the EU and the CoE on the same issue further create space for various interpretations of the conditionality at the local level which has been the case with this policy.

Neglecting the smaller communities

The second major shortcoming of the implementation of this policy comes from the lack of attention to the smaller communities in Macedonia. A 2012 policy brief of a local think tank analysing this policy put forward the following numbers: the Turks and the Roma who represent 3.85% and 2.66 % of the population participate with 1.49% or 0.64% in the civil service respectively (Risteska, 2012). In the Progress Reports, the European Commission highlights that the representation of the smaller communities, particularly the Turks and Roma, in the civil service still remains low (EC, 2010b). In response to this problem and upon pressure from minority MPs in 2008, the Government established an Agency for protection of the rights of the smaller communities. The Agency was not recommended in European Commission documents and Commission officials argued that it was not an element of EU conditionality, however, after its establishment it became a regular element of the national reporting on the EU affairs (Government of the Republic of Macedonia, 2009a). The origin of the policy and its introduction in the EU accession process are similar as the case of the law on languages examined in the previous chapter, illustrating the domestic origins of policies which later become part of EU conditionality.

To illustrate this discrepancy, an EU official highlighted that: “the European Commission did not recommend the setting up of a new Agency, but that the current structures needed to change in their mode of work and take the

smaller communities into consideration”.²⁰⁵ At the same time, the interviewed employees of the Agency considered that “the institution was set up in response to EU recommendations”.²⁰⁶ Hence, at the national level the activities of the Agency have become part of the NPAA and activities undertaken for EU accession (Government of the Republic of Macedonia, 2011b). The European Commission officials explained this development as “using the Commission’s remarks for populist goals. The appearance of the Agency can be seen partly as a result of the commitment to the EU, but it was not in the spirit of the recommendation”.²⁰⁷

The functioning of this institution has generally been wrought with difficulties, as it “does not have a clear mandate or competences”.²⁰⁸ In addition, its operation was delayed extensively by the lack of funds, late appointment of the director and staff. An OSCE official working on a feasibility study of the Agency for smaller communities has concluded that “it is clear it has not been strengthened enough to become really relevant in terms of staff or budget or clear mandate, as it does not have enough funding or human resources.”²⁰⁹ Similarly, in the 2011 report, the Commission highlights that “due to an unclear mandate and significant reduction of the budget in 2011, the Agency is unable to accomplish most of its tasks defined by the law” (EC, 2011c p.20). The weakness of this institution is specifically evident in the implementation of the equitable representation policy, as the Agency legally has no say in the employment procedures for this purpose. An official from the Agency highlighted that “on meetings with the Secretariat²¹⁰ we insisted to at least conduct monitoring in the committees for employment – we thought that they should allow this although according to the Law they do not have such an obligation”.²¹¹ This requirement was however, not fulfilled. In the 2011 Progress report an improvement was noted since “in 2010 there was a 46% increase of members of Roma and a 12% increase in the Turkish community. However, more efforts are needed in order to

²⁰⁵ Author’s interview with European Commission official, Skopje, 21 January 2011.

²⁰⁶ Author’s interview with an official of the Agency for the protection of the rights of the smaller communities, Skopje, 17 January 2011.

²⁰⁷ Author’s interview with European Commission official, Skopje, 21 January 2011.

²⁰⁸ Author’s interview with European Commission official, Skopje, 21 January 2011, Author’s interview with OSCE representative, Skopje, 19 January 2011

²⁰⁹ Author’s interview with OSCE representative, Skopje, 19 January 2011.

²¹⁰ Meaning Secretariat for implementation of the Ohrid Framework Agreement.

²¹¹ Author’s interview with an official of the Agency for the protection of the rights of the smaller communities, Skopje, 17 January 2011.

improve the quality of the recruitment process” (EC, 2011c p.20). Still, the numbers remain miniscule, which has led a local think tank to conclude the implementation of this principle had important long-term impact on the civil service that resulted in injustice and inequality (Risteska, 2012).

The weak progress in the employments of the smaller communities stands in sharp contrast with the progress in terms of the Albanian community. Most of my interlocutors concluded that the EU and consequently the national authorities did not express any continued interest in realising this policy for the non-Albanian community. While the European Commission mentions the underrepresentation of the smaller communities, most of the interviewees highlighted there was no increased involvement of the EU on this issue in addition to the reference in the reports. Similarly, the Agency officials argued that “the EU Delegation conducts solely monitoring of our work and we do not see more interest from them, although we hope in the future things will change”.²¹² Generally, at the national level, both national officials and representatives of CSOs underlined that the EU has not put increasing pressure despite the evident “appropriation of this policy by the Albanian community”.²¹³ There was a widespread opinion that while the Commission considered the employment of this community as a priority, the other communities were neglected.

Overall, the analysis of the role EU conditionality has played in the equitable representation policy in Macedonia points to a set of divergent conclusions. The study of the EU documents and the interviews indicates that this issue was at the forefront of EU conditionality and was also supported by EU funds and assistance. At the same time, the Government responded formally with Action Plans and employment of non-majority communities (primarily Albanian). Even though with these results, the role of EU conditionality in supporting the domestic policy makers in this field could be considered as positive, on a substantive level the policy has been accompanied by numerous problems. The domestic actors and the interaction with the context resulted in mixed results of the policy and highlighted the need for re-examination of the methods of its implementation. Moreover, the strict benchmarking in relation to the equitable representation in the police brought about effective implementation in this

²¹² Author’s interview with an official of the Agency for the protection of the rights of the smaller communities, Skopje, 17 January 2011.

²¹³ Author’s interviews with civil servant from the Ministry of Justice, Skopje, 18 January 2011.

specific sector. At a more general level, although there was no major domestic opposition to equitable representation, the policy was not put into practice as expected. The employment in many cases has been only on paper, violating merit principles and disregarding the needs of the smaller communities. Subsequently, it has become a subject of increasing criticism from both European and national officials and administration. In the last report, the European Commission stated that: the recruitment procedure remains vulnerable to undue political influence (EC, 2011c p.10).

This example confirms the findings in literature over the potential of the EU conditionality to facilitate policies which can lead to polarisation at the local level. In addition, it sheds light on the conflict between the objective of achieving representation in the administration and the merit principle also supported by the EU conditionality. These conflicting objectives also raise concerns over the dynamic relationship between Europeanisation by conditionality and democratic consolidation. In this direction, similarly, Przeworski (1995) highlights that in the absence of a usable bureaucracy, the state is unable to implement either economic or political reforms. As such, the functioning administration becomes a condition for democratic consolidation as well as an element of EU conditionality, which is being undermined by the local usage of the set of conditions related to the representation of minorities in the administration. As such this example confirms the potential for retrenchment through Europeanisation, as one of the outcomes of this process identified by Radaelli (2000). Lastly, the analysis highlights the need to consider the EU conditionality in light of the domestic actors and context in order to be able to account for its outcomes, but also the process of its application.

7.4 Representation of minorities in the administration as an EU condition in Croatia

7.4.1 Reticence prior to the official negotiations on Chapter 23: judiciary and fundamental rights

Representation of minorities in the local and regional self-government units, the state administration, judicial bodies and the public administration is a recurring key priority in the Accession Partnerships for Croatia (Council, 2004, Council, 2006a). Similarly, in the 2004 Opinion on Croatia's application for membership in the EU, the European Commission notes that the minorities are still underrepresented in state administrative and judicial bodies, as envisaged by

the CLNM (EC, 2004b). Stakeholders at the national level confirmed the significance assigned to this condition highlighting that “the EU concentrated primarily on the proportional representation in the state administration”.²¹⁴ At the same time, in the national documents prepared for the purposes of European integration there is little mention of the activities undertaken for the realisation of this EU condition. For example, even though Croatia had been preparing National Plans for Integration in the EU (NPIEU) since 1999, and the legal obligation for representation is dated since later 2002, until 2007/8 (see next section) there is no mention of any activities directed for the implementation of this policy.²¹⁵

Stakeholders at the national level have confirmed that in the first years after the adoption of the law “most of the activities were focused on finding reasons why not to implement this law”.²¹⁶ It was stressed that in this segment the European Commission and the representatives of the minorities have achieved less precisely because of the persisting resistance among the political elites to implement the constitutional and legal obligation for the application of article 22 of the CLNM.²¹⁷ This is confirmed in a 2004 report on the implementation of the FCNM, in which the government acknowledged the obstacles that limit the realisation of the right to employment (Government of the Republic of Croatia, 2004). The report namely underlines problems that “are primarily the consequence of certain economic difficulties which affect all Croatian citizens, including members of national minorities. This assessment especially concerns the exercise of national minority rights in the war-devastated areas (employment, reconstruction)” (Government of the Republic of Croatia, 2004 p.3). In relation to this report, in 2004 the Advisory Committee Opinion on Croatia highlights that it “has not been informed of any positive, targeted Government programmes launched to counter the impact of the past discriminatory measures that Serbs in particular experienced in various fields of employment” (CoE, 2004 p.16). Similar assessments have been made in the shadow Reports submitted to the CoE on the FCNM implementation in Croatia (Center for Peace, 2004).

²¹⁴ Author’s interview with civil servant in the Ministry of Foreign Affairs, Brussels, 5 December 2010.

²¹⁵ These plans contain the planned activities of the Government for the realisation of the EU conditions.

²¹⁶ Author’s interview with CSO representative, Zagreb, 14 June 2011.

²¹⁷ Author’s interview with Member of Croatian Parliament, Zagreb, 2 May 2011, Author’s interview with CSO representative, Zagreb, 14 June 2011.

The lack of progress in this policy area has been noted by the EU in the 2006 Progress Report, where the Commission employed stronger language highlighting that “the political will to develop a long term strategy to implement the CLNM’s minority employment provisions is lacking” (EC, 2006a p.11). Since the implementation of these provisions was dependent upon changes in area legislation, in the same report the European Commission criticizes the newly adopted legislation also for only mirroring the provisions of CLNM without providing for more detailed regulation (EC, 2006a).²¹⁸ The EU’s critique in relation to the newly adopted legislation is a response to the common ‘justification’ in Croatian political discourse on the difficulties in the implementation of the provision of the Constitutional Law as being too ‘vague’.²¹⁹ In fact, local NGOs such as the Serbian democratic Forum expected that the representation should be ensured through laws, implementation acts and statutes of local and regional governments (Gjenero, 2006b). As a result, in 2006 the European Commission highlighted that “concrete action is now required to develop recruitment plans at all levels of state administration and, to set up civil servants registry to allow for systematic statistics collection. The Government needs to issue clear instructions on how to proceed” (EC, 2006a p.11).

The 2007 NPIEU is the first national strategic documents which mentions the employment of the minorities and foresees the “adoption of a mid-term employment plan in the state administration for a two-year period” as a priority for 2008-2009 (Government of the Republic of Croatia, 2007 p.32). Having in mind that Croatia has been preparing strategic documents for EU accession since the late 1990s, the mention in 2007 comes at a very late stage and without specific obligations on employment. The continuous weak enforcement of this provision is further criticized by the Commission in the course of 2007 both in the screening report for the Chapter 23: Judiciary and fundamental rights and in the 2007 Progress report. In the former, the Commission highlights that “in February 2007 a plan for recruitment to the state administration included for the first time global targets for the recruitment of national minorities. While the plan does not go into detail, it is a positive first step” (EC, 2007b p.26). In the Progress report of the same year it is noted that “a long-term strategy to implement the CLNM’s

²¹⁸ These entail the Law on Civil Service and the Law on Local and Regional Self-Government, as well as in the Law on Courts and Law on State Judicial Council.

²¹⁹ Author’s interview with a representative of the Ministry of Justice and a member of the negotiating team, Zagreb, 24 May 2011.

minority employment provisions is lacking [and] that detailed recruitment plans are missing at all levels of state administration” (EC, 2007a p.13). In response to this criticism, “the Central Office for Public Administration adopted the Plan of Admittance to the Civil Service for 2007 [...] [which] lays down the obligation of state administration bodies to abide in their employment policies by the provisions of the CLNM” (Government of the Republic of Croatia, 2008b p.66). Following the adoption of this document, the Commission assessed that “the plan for employment in the administration at County, Town and Municipality level is still not adequate” (EC, 2008a p.13). Before 2008 therefore the progress is to be considered as limited to the formal adoption of just one document with no effective signs of implementation confirming the notions of the ‘fake’ compliance with conditionality generally in the region (Noutcheva, 2007).

Stakeholders at the EU and national level including officials and civil society representatives confirmed this weak implementation record by highlighting that “there was no evident mobilisation of resources or any activities undertaken for the realisation of this legislative provision until late 2008”.²²⁰ In fact, a civil society sector representative stressed that “prior to 2008 the policy was largely ignored as it was expected that it would stir a lot of political problems”.²²¹ The reluctance to deal with this provision has also been noted in local CSO studies. Research conducted in the war affected areas in 2006, where 20-30% of the population belong to the Serb community, shows that they represented around 9% of the employees in the public services (Gjenero, 2006b). Lastly, similarly as in Macedonia, a study on the application of the CLNM conducted in 2007 concludes that five years after the adoption of the CLNM a database of reliable official data has not been established which is an obstacle to the assessment of the application of the legal provisions of proportional representation of national minorities in the administration (Serbian Democratic Forum, 2007).²²²

²²⁰ Author’s interview with European Commission Official, Brussels 8 December 2010. .

²²¹ Author’s interview with CSO representative, Zagreb, 14 June 2011;

²²² The lack of data is further examined in the following section.

7.4.2 Post-2008: The accession negotiations as an impetus for “formal” fulfilment with weak implementation

Since 2008 and the launching of the accession negotiations, representation of minorities in the public sector has been placed formally on the agenda in Croatia. In 2008, the first plan for the implementation of the CLNM was adopted, which was required as an opening benchmark for the negotiations from the EU.²²³ An official from the Commission argued that “this Action Plan was one of the opening benchmarks for chapter 23 precisely because of the mixed records of implementation of this law, in particular its employment provisions”.²²⁴ For the CSOs, “the inclusion of the implementation of the CLNM in the negotiations opening benchmarks instigated the government to start looking for ways to implement the policy on proportional representation of minorities”.²²⁵ This assessment is substantiated in the 2009 NPIEU in which the Croatian government for the first time provides information on recruitment numbers and current state of employment of national minorities in the civil service (See Government of the Republic of Croatia, 2009). Still, in the negotiating position of Croatia on chapter 23 prepared in February 2010 solely the legal provisions on the policy are cited, without any information on the plans or record of implementation (Government of the Republic of Croatia, 2010b). Thus, not surprisingly, European Commission interviewees have pointed that this has been one of the “weakest elements of the Croatia’s negotiations without evident progress”.²²⁶

The problems in the implementation have been related to two major reasons: lack of reliable data and different understandings on the scope of the provision at the EU and national level. In relation to the former, official arguments were grounded in potential violation of data protection. However, other sources strongly indicate that Serbs and Roma are excluded from the state administration at all levels.²²⁷ “In particular in areas where Serb refugees have returned they are

²²³ Author’s interview with European Commission official, Brussels 8 December 2010.

²²⁴ Author’s interview with European Commission official, Brussels 8 December 2010.

²²⁵ Author’s interview with CSO representative, Zagreb, 14 June 2011.

²²⁶ Author’s interview with European Commission official, Brussels, 8 December 2010.

²²⁷ Collection and analyses of data are limited by provisions of the Article 8 paragraph 1 of the Law on Protection of Personal Data, that prohibit collection and further analyses of personal data related to racial or ethnic background, political, religious, and other affiliation, union membership, health or sexual life, and data on criminal and violation procedures.

totally excluded from access to posts in the administration” (Marko, 2005 p.18). The EU noted the lack of reliable data in the 2007 screening report by underlining that detailed recruitment plans at all levels of state administration and a civil servants' registry to allow for systematic statistics collection are missing (EC, 2007b). In response, the Croatian government in the commentary to the third Opinion of the Advisory Committee of the FCNM the Croatian Government announced the establishment of Register of Persons Employed in Civil and Public Services by 31 March 2011 (Government of the Republic of Croatia, 2010a). Nevertheless, in its 2011 Action Plan for the implementation of the CLNM, the Government confirmed that the establishment of the centralised statistical database for the monitoring of the minority employments has not been realised (Government of the Republic of Croatia, 2011a) although later it announced that the Register is in a pilot-phase (Government of the Republic of Croatia, 2011b).

In this context of data availability, the EU's focus on numbers has also been subject to criticism by stakeholders at the national level. On the one hand, Commission representatives considered the possibility of quantification as an advantage for the overall transparency of this process.²²⁸ Staff of the Croatian ombudsman, however, questioned the focus on statistics “due to the lack of disaggregated data on the local level”.²²⁹ Research on Croatia has explained the problems of policy enforcement at the local level through the clientelistic networks created in these areas by the political parties in power in which local groups displayed resistance to minority participation in decision making or employment. Hence, these links “put a limit on how far the central government [...] could guarantee the exercise of minority rights, without sparking political instability” (Djuric, 2010 p.1646). Generally in Croatia, administrative obstruction was particularly acute at the local level (Fisher, 2006). Thus, the analysis confirms the ongoing problem of the enlargement process and accession negotiations in general of excluding regional and local elites which were in the case of this policy key stakeholders (Hughes et al., 2005).

The differences in the on-the-ground situation between the regions that were reintegrated peacefully and by the operations Flash and Storm confirms this

²²⁸ Author's interview with European Commission official, Brussels 08 December 2010, Author's interview with senior official in the Ombudsman office, Zagreb, 17 May 2011.

²²⁹ Author's interview with European Commission official, Brussels 08 December 2010, Author's interview with senior official in the Ombudsman office, Zagreb, 17 May 2011.

assessment. In the areas reintegrated peacefully on the basis of the Erdut agreement of 1995, the representation of the Serb national community in the public services matches their representation in the population (30,8% of the population and 26,5% in the public sector), while in other areas they represent 3-4% of the employees in the public sector (Serbian Democratic Forum, 2008). A Serbian MP explained this discrepancy in the following way:

*One is the case of Eastern Slavonia, where there was peaceful reintegration of the Serb community and with support from international community a high level of participation was ensured. This is not the case in other parts of the country where people return and the employment in the administration, police and judiciary is much slower with a lot of resistance, thus, the results are much more modest.*²³⁰

Lastly, the lack of available data is also aggravated by the debates on the standard against which the proportional representation is to be ensured. This was an on-going problem encountered in previous research on Croatia as well and is linked to the demographic changes that occurred in the country between 1991 and 2001 (Smoljan, 2003). The results of the April 2001 census showed that 7.47% of Croatia's population identify as national minorities noting a decrease of 50% in comparison to 1991. At the same time the total population of Croatia decreased 7.25%, while the share of the majority Croatian nation in the total population increased for 11.53% (for a detailed overview see Tatalović, 2006). The Serb community in Croatia did not recognise the data of the 2001 census as it considered the census did not register 64.000 people which were in Serbia at the time and 2000 which were in Bosnia as they were not on their registered residences (Jovanović, 2010). Some of these people also did not feel safe enough to declare as Serbs, which is an additional problem since many of the minority rights depend on the number of citizens which will declare as belonging to a specific minority (Jović, 2011, Mikic, 2006). Overall, all "official records on ethnic affiliation that are available in the Republic of Croatia are either not updated (voters' lists), or are insufficiently detailed (statistics on minority representation in judicial bodies), or their reliability is questioned by certain minorities (2001 census results)" (Mikic, 2006 p.3). Thus, the Commission has asked to the government to present statistics on judiciary and state administration which needs to be

²³⁰ Author's interview with Member of Croatian Parliament, Zagreb, 2 May 2011.

correlated with the latest census.²³¹ As a result of the difficulty in statistics, recent assessments of the EU's financial assistance in the region has recommended to the candidate countries to "ensure that national statistics bureaus build capacity to collect ethnic and gender disaggregated data systematically in all key sectors" (Ferrari and Liaquat Ali Khan, 2010 p.32). Moreover, research has shown that "the lack of even basic systematic data on levels of minority inclusion" is a common trait of the new members of the EU from the Eastern enlargement as well (Protsyk and Sachariew, 2008 p.3).

In addition to the data reliability, the condition of ensuring representation of minorities in the public sector was contested in relation to its scope and reference to the "wider public sector".²³² This EU benchmark was debated at the national level in Croatia since the expression 'wider public sector' was not considered to be in accordance with the legislative requirements in Croatia.²³³ While the civil service encompasses the employees in the state administrative bodies such as ministries and employs approximately 65 000 people, the wider public sector consists of the approximately 200 000 employees in schools, hospitals etc (Koprić, 2009). European Commission officials explain the wording of this condition in the following way: "looking beyond there was discrimination in the wider public sector, because the CLNM only covers the judiciary, the police and the central state government bodies and some local authorities".²³⁴ In response, for the closing benchmarks, "the Commission recommended the preparation of a study on the participation of national minorities in the wider public sector in order to determine the extent of the problem".²³⁵ The national authorities, however, contested this request arguing that the "representation in the wider public sector is foreseen neither in international legislation nor in national legislation such as the CLNM".²³⁶ The limited scope of the existing legal provision was confirmed for example already in 2003 in a Human Rights Watch

²³¹ Author's interview with European Commission official, Zagreb, 03 June 2011.

²³² Author's interview with a senior civil servant in the Ministry of Justice and member of the negotiating team, Zagreb, 24 May 2011.

²³³ Author's interview with a senior civil servant in the Ministry of Justice and member of the negotiating team, Zagreb, 24 May 2011.

²³⁴ Author's interview with European Commission official, Brussels 8 December 2010.

²³⁵ Author's interview with European Commission official, Brussels 8 December 2010.

²³⁶ Author's interview with senior civil servant in the Ministry of Foreign Affairs, Zagreb, 2 June 2011, Author's interview with a senior civil servant in the Ministry of Justice and member of the negotiating team, Zagreb, 24 May 2011.

Report which considered that “the obligation to ensure proportional representation does not extend to public institutions, such as schools, universities, and hospitals, or to the police” (HRW, 2003 p.55). Hence, at the national level it has been argued that “the benchmark should have been narrowed down to the civil service which encompasses a much smaller number of employees”.²³⁷

Stakeholders linked the origin of this condition “to a visit of the OSCE HCNM which in a letter expressed concerns over the issue of equal representation broadly, which was then turned into a benchmark”.²³⁸ The same was confirmed by the interviewees in the EU Delegation in Zagreb.²³⁹ Moreover, “after the introduction of this benchmark from the EU, the FCNM Advisory Committee on national minorities accepted the terminology in its report and used it, although it is not an obligation from the Convention”.²⁴⁰ The 2010 report of the Advisory Committee of the Framework Convention of National Minorities further reiterates its deep concern that effective measures to redress the significant underrepresentation of persons belonging to national minorities in the administration and the judiciary have not been taken (CoE, 2010). This example illustrates the dynamic nature of these processes and the multi-directional nature of the link between the OSCE, EU and the CoE. Because of its contested nature however, national interviewees still considered that “the stipulation of this benchmark on representation in the *wider public sector* was illegitimate, as it is not foreseen either in international legislation, such as the FCNM, or national legislation in art.22 of the CLNM”.²⁴¹

Despite the questioning of the legitimacy of this condition at the national level, in order to deal with this benchmark, the Croatian government contracted a local research institute to conduct an analysis of the employment of national minorities in the public sector in Croatia in early 2011. The results of this research based on a survey indicated ‘over-representation’ of minorities in the public

²³⁷ Author’s interview with a representative of the Ministry of Justice and member of the negotiating team, Zagreb, 24 May 2011.

²³⁸ Author’s interview with senior civil servant in the Ministry of Foreign Affairs, Zagreb, 2 June 2011.

²³⁹ Author’s interview with EC Delegation official, Zagreb 3 June 2011.

²⁴⁰ Author’s interview with senior civil servant in the Ministry of Foreign Affairs, Zagreb, 2 June 2011.

²⁴¹ Author’s interview with senior civil servant in the Ministry of Foreign Affairs, Zagreb, 2 June 2011, Author’s interview with a senior civil servant in the Ministry of Justice and member of the negotiating team, Zagreb, 24 May 2011.

sector.²⁴² On the basis of this study, which is not publicly available, in the report on the fulfilment of the benchmarks for chapter 23 the Croatian officials argued that there is no under-representation of minorities in the public sector (Government of the Republic of Croatia, 2011b) which led to further contestation of the way in which the Commission puts forward the accession benchmarks in an area such as minority policies.²⁴³ Among other stakeholders such as minority NGOs, however, the study was subject to criticisms, in terms of the selection of the regions surveyed, as well as the survey method itself (Jovanović, 2011). Furthermore, the non-transparent procedure for preparation of the study and the fact that the study was not made public also aroused controversies among the minority organisations and representatives.²⁴⁴

In the March 2011 interim report on the accession negotiations the Commission notes the study, but at the same time highlights that “Croatia will need to set out long term plans, backed by statistics, for fully meeting its obligations [... and...] adopt a plan to tackle the shortcomings identified by the study on the under-representation of minorities in the *wider public sector*” (EC, 2011d p.5 emphasis added). This recommendation stands in sharp contrast with the position of the negotiating team that argued “the problem in this policy area was non-existent”.²⁴⁵ The discussions in relation to this specific condition therefore highlight the difficulty in determining common benchmarks in areas outside of the *acquis* such as minority policies. This is a commonly recognized problem among European Commission and national officials who stress that “the achieving of a common understanding on what are the expectations is the most difficult segment in relation to minority policies”.²⁴⁶ Hence, the example of minority representation in the administration underlines the potential for increasing politicisation of EU political criteria due to their flexible nature and the subjective approach in their evaluation. With this conclusion, this chapter largely confirms the salience of domestic factors for the outcome of conditionality in areas not regulated by the *acquis* (Brusis, 2005b).

²⁴² Author’s interview with CSO representative, Zagreb, 21 June 2011.

²⁴³ Author’s interview with a senior civil servant in the Ministry of Justice and member of the negotiating team, Zagreb, 24 May 2011.

²⁴⁴ Author’s interview with CSO representative, Zagreb, 21 June 2011.

²⁴⁵ Author’s interview with a senior civil servant in the Ministry of Justice and member of the negotiating team, Zagreb, 24 May 2011.

²⁴⁶ Author’s interview with European Commission official, Brussels 08 December 2010.

The slow progress in the implementation of this policy was reflected in the public debates at the time of the conclusion of the accession negotiations. Croatian NGOs prepared an opinion challenging the ending of the EU accession negotiations due to unfulfilled obligations. The NGOs argued for the need to provide “evidence of real-life and real-time employment of members of national minorities in 2011 and the listing of targets over the upcoming two years, specified by region and state and local institutions, with accompanying financial plan and description of supportive measures” (2011b p.3). The CSOs criticism has been confirmed in the EU reports for closing the negotiations and also the last Progress Report of 2011, issued just two months before the signing of the accession treaty. The accession document of June 2011 concluding the negotiations confirmed that “the EU notes the adoption of an action plan on minority employment under the CARNM, which includes a target of 5.5% by 2014” (European Union Common Position, 2011 p.17). Subsequent EU reports in late 2011 and CSO monitoring report issued in mid-2012 have both confirmed that there was no tangible progress on the issue, questioning the targets put forward and the potential of the EU conditionality to bring about change in this specific area (EC, 2011a, 2012).²⁴⁷

7.4.3 Representation in the police – statistics and reality

The police representation in Croatia, like in Macedonia, has been a separate case from the general story of representation of minorities. Representation in the police in the Croatia was of primary significance since, “HDZ pledged that perceived historical imbalances would be redressed – such as fixing the disproportional representation of the Serbs who made up thirteen per cent of Croatia’s 4.7 million population in the police and media” (Silber and Little, 1996 p.87).²⁴⁸ One of my interviewees argued that “there is a collective trauma among the Croatians partly justified from the fact that the police was in the hands of the Serbs in the Yugoslav period”.²⁴⁹ As a result of the war in the early 1990s and the occupation by the Serb authorities, the representation of Serbs in the police carries exceptional significance in Croatia.

²⁴⁷ As will be shown in the next section, the targets were partly reached with employment of 400 border police officers belonging to the national minorities, which did not resolve the pressing issues of regional differences or employment in the public enterprises and local level.

²⁴⁸ For more on this see chapter four.

²⁴⁹ Author’s interview with CSO representative, Zagreb, 16 June 2011.

In the 2005 Progress Report, the European Commission assesses that the implementation of the CLNM has also been particularly limited with respect to those provisions on minority representation in State administrative and judicial bodies and in the police, where there is clear under-representation of minorities, especially Serbs (EC, 2005b). This corresponds with the conclusion that “notwithstanding international pressure, the Ministry of Interior did not make its first priority proportionality of representation in the police force throughout the Croatian territory” (Zanotti, 2008 p.248). For example, in 2005 minorities represented two per cent of the police force as compared to 7.5 per cent of the population (OSCE, 2005). Already in 2006, the Commission notes that “there are signs of improvement with regard to the police. Out of the 300 trainees for the position of a police officer with the Basic Police School in 2006, 22 trainees, i.e. 7.3% were members of national minorities. This almost corresponds to the share of minority population, according to the 2001 census” (7.5%) (EC, 2006a p.11).

In 2010, the Ombudsman office announced that the percentage of representation matches the percentage of minorities in the population even though this was not the case in all parts of the country.²⁵⁰ An interviewee highlighted as well that “the percentage of Serbs in the police which matches the Serbs percentage but because they are represented with 30% in the Vukovar district since there was no one else in that area”.²⁵¹ However, “in the areas of special state concern the police officers would come from places 50 km far, while in the specific town there are Serb people that have the necessary qualifications and were not employed, disregarding the costs of such actions”.²⁵² The International Helsinki Federation highlighted this already in 2007, reporting that “in some cases, ethnic Croats who lived outside of the regions in question were hired and reimbursed for daily commuting costs, although the registers of local employment agencies featured ethnic minority candidates with adequate qualifications” (IHF, 2007 p.45). At the same time, in the last shadow report for the implementation of the Framework Convention on National minorities it is argued that there are numerous cases of Serb nationals who are being rejected for positions in the police and are subject to substantial questioning as to their role in the war or political engagement (Center for Peace, 2010). Similarly, the

²⁵⁰ Author’s interview with senior official in the Ombudsman office, Zagreb, 17 May 2011.

²⁵¹ Author’s interview with CSO representative, Zagreb, 16 June 2011.

²⁵² Author’s interview with senior official in the Ombudsman office, Zagreb, 17 May 2011.

European Commission in its more recent reports confirms the on-going discrimination and under-representation in the police, although no data is used (EC, 2009a, EC, 2010a). In fact in the first half of 2013, right before accession in Croatia the target number of 5% representation of minorities was reached with the employment of 400 border police officers (EC, 2013). In the police, therefore, the situation is similar to the Macedonian case where data on an aggregate level match the representation, however, looking below in regions there are major disparities in terms of the structure of the population and the representation of minorities in the police forces.

Overall, the case of Croatia shows that despite the EU formal insistence on the implementation of the principle of representation of minorities, at the national level very little has been done, yet with the exception of the statistical increase in the police forces. Tracing the development of the EU conditions and the national responses, the section has shown the increasing scope for different interpretation at the EU and national level of conditions in relation to minority policies, as was the case with the equitable representation. The contestation of this condition, despite its inclusion in the national legislation stems from two perspectives. First, the framing of the condition in terms of the representation of minorities in the public sector was contested in terms of its “legitimacy” highlighting the problems of stipulating and monitoring non-*acquis* related conditionality. Second, due to the delay in setting up representative data on the minorities, the fulfilment of this condition was subject to further disagreement between the European Commission and the national authorities.

7.5 Conclusion

This chapter has examined how the EU and national documents, as well as stakeholders have understood and applied conditionality in relation to representation of national minorities in the administration in Macedonia and Croatia. This policy topped the agenda of EU conditionality in relation to minority policies in both case studies and is a novel addition to the EU accession criteria. Through process tracing, the chapter highlighted how the EU conditionality is used by actors at the national level and how the involvement of the EU can become engrained in the domestic politics. The chapter foremost studied the consistency in the application of conditionality focusing on this specific policy, its dependence on domestic actors and looked into the implications of the application of conditionality for the process of democratic consolidation. Through

the two cases of Macedonia and Croatia, it illustrated how a similar EU condition can result in diverging outcomes due to the differentiated responses/non-responses at the national level.

In Macedonia, the analysis showed that this policy was part of the OFA obligations and was also a formal element of the EU Progress Reports and the European/Accession Partnerships. In addition, the policy was supported by funds and by policy entrepreneurs at the national level (read: the minority party in Government). However, even in these conditions, substantial policy results were not accomplished due to the party capture of the policy and the violation of the merit principle. The domestic actors and the interaction with the context resulted in mixed results of the policy and highlighted the need for re-examination of the methods of its implementation. Thus, with the exception of the equal representation in the police, this reform at the national level has been encountered with discontent on the manner of its implementation. The outcome has primarily been statistical increase of the Albanian minority and the policy has become associated with party based employments, leading to marginalisation of the smaller communities. Subsequently, this policy has become a subject which has received increasing criticism from both European and national officials and administration, highlighting that even more specific benchmarks are not a guarantee of success, as expected in conditionality literature.

At the same time, the EU recommendations were broadly interpreted and used in substantiating the establishment of new minority institutions such as the Agency for the rights of the smaller communities. This example, as the case of the law of languages in Macedonia examined in the previous chapter illustrates how the national actors feed into the EU conditionality mechanism. The establishment of this Agency however, is widely presented as non-conditionality by the EU officials illustrating the increasing scope for interpretation in areas not regulated by the *acquis*. In this direction, literature has commonly warned against the increasing scope for political assessments by the EU institutions, foremost the Commission (Hughes et al., 2005). This example however, underlines the potential for interpretation left to the national actors in relation to the political criteria, specifically minority policies.

The case of Croatia is similar to Macedonia since the representation has been an element of EU conditionality as of the early 2000s, as shown from the analysis of the EU documents and interview data. However, the response at the national level has been almost non-existent until the later phases of the accession

negotiations. In the last couple of years and with the stipulation of this condition as a key element of EU accession in the negotiations, the issue has been put formally higher on the national agenda. Nevertheless, in general most of the stakeholders have confirmed that this has been one of the weakest elements of Croatia's accession process, characterised by weak compliance and highly contested at the national level. Furthermore, the focus on statistical increase of the administration has been also questioned in terms of its effectiveness due to the lack of focus on real participation in decision making. Ultimately, the lack of progress on this policy was included in the opinion of the Croatian CSOs, which opposed the end of the accession negotiations with Croatia, as one of the weakest areas of EU conditionality. The Croatian example therefore confirms the potential for shallow Europeanisation as coined by Goetz (2005) and underlines the significance of the domestic actors for the success of conditionality.

The analysis highlighted the lack of reliable data on the employees and minority-disaggregated data as a common problem in both countries. In turn, the lack of reliable data has contributed to blurring the potential for consistent evaluation of the policy by the European Commission and stipulating more precise benchmarks. On the other hand, both case studies show the divergent directions the implementation of EU conditionality can take due to the role of domestic actors. While in Macedonia formally the policy is being implemented it has resulted in stimulating non-merit employment and marginalising smaller communities. The policy has in a way been captured by the organised minority interests and the EU support for its implementation has been used in this process. In Croatia, despite the formal progress in the negotiations and the pressure from the EU, the national level opposition to the implementation of this policy has severely hindered its implementation. This example therefore confirms the significance of domestic actors, but also the contextual nature of their operation.

As a result, both cases present a challenge to the study of EU conditionality in several aspects. In the case of Macedonia, the further and clear benchmarking on this policy has been associated with formal implementation accompanied with significant difficulties. In this respect, the example of Macedonia questions the success of EU conditionality in minority policies even in the circumstances when the EU would employ clear benchmarks as was the case with this policy. On a different note, the Croatian example questions the likelihood of success of conditionality in politically sensitive areas even under the shadow of the formal EU negotiations. In fact, since 2009 European think tanks

such as the European Stability Initiative have called for launching of negotiations with all the countries of the Western Balkans to speed up their reform processes (European Stability Initiative, 2012). The lag in the implementation of the representation policy in the case of Croatia nevertheless severely questions such recommendations as well as the conclusions from the previous enlargement which have argued that the negotiations are a type of a guarantee against backtracking in the response to EU conditionality.

8. Conclusions: Shaping national minority in Croatia and Macedonia – the EU and domestic actors at play

8.1 Introduction

This thesis has studied the role of EU conditionality in shaping national minority policies in Croatia and Macedonia in the EU accession process. As outlined in the introduction, the dissertation had two major objectives. First, building upon the findings of the 2004 and 2007 enlargement, it extended the research on the study of the role of EU conditionality in the domestic context and its relationship with democratisation processes to the new candidates for EU accession. Second, it contributed to filling a gap in literature in the study of the accession process of the Western Balkans. Both objectives responded to findings of the literature review. In fact, research on pre-accession conditionality and minority policies has been limited to countries of the 2004 and 2007 Eastern enlargement which concluded with their membership in the Union. After accession, research on the new member states has evolved in the direction of post-accession compliance showing a decline in positive developments in the policy area (Schwellnus et al., 2009, Epstein and Sedelmeier, 2008).

The pre-accession conditionality was further developed and applied in the Western Balkans, as the region next in line for EU accession. As explained in the introduction of this thesis, the academic literature in relation to the minority question in the Balkans has focused on the origins of the wars and conflicts, whereas the international actors' role has mainly been studied in reference with their respective significance for the peacemaking and peacekeeping. Nevertheless, the Western Balkans countries have been in the accession pipeline since 2004 and therefore provide a fertile ground for the study of the role of the EU conditionality. Studying this region, Braniff (2009) argues that the EU "has conformed to a policy learning model" which has resulted in extending the political conditionality and the timeframe for accession (p.547). In a similar vein, it has been put forward that "the EU is adding further, yet necessary, political conditions and criteria to weaker or more reluctant partners and emphasizes the 'journey' rather than the outcome of accession" in the Western Balkans (Anastasakis, 2008 p.365). Building upon the research from the previous enlargement round, while underlining the contextual specificities of the Balkans, this thesis provided an in depth overview of the operation of conditionality in Croatia and Macedonia.

Macedonia and Croatia were the first candidates for EU accession in the Balkans and in both of these cases minority policies carry increasing relevance. In the former, minorities represent around 35% of the total population. Since 2001, and a largely consociational model has been established in the country with increasing EU involvement. In addition, in the early 2000s Macedonia has been hailed as a success of EU conditionality and as a case of best practice demonstrating the successful cooperation between the EU and different international actors in the Balkans (See Ilievski and Taleski, 2009). In Croatia, the national minorities are a much smaller percent of the population (around 10% according to the last census)²⁵³, but due to the legacy of the wars of the 1990s, their integration is crucial for the democratic consolidation. The country has also been praised as an example of the success of EU conditionality and is the first one from the region to have acceded to the Union in mid-2013. As a result, the presented study of the role of EU conditionality in these two cases carries implications for the rest of the region and also illustrates the evolution of EU pre-accession conditionality.

Theoretically, this dissertation built upon the findings of the study of Europeanisation by conditionality in relation to national minority policies in candidate countries, foremost the 2004 and 2007 Eastern enlargement. As outlined in the introduction and chapter three of the dissertation, the research on the role of EU conditionality in relation to minority policies has been characterised by disagreements on meaning and impact, making its analysis increasingly context-specific. The terms conditionality and national minorities are contested on a general level and in the EU accession literature, as elaborated in chapter three. In relation to the former, the research on the previous enlargement predominantly framed the study of conditionality within an external incentives model linking the success of conditionality to the low adoption costs and the high credibility of the membership perspective (Schimmelfennig and Sedelmeier, 2005b).²⁵⁴ This model is nevertheless directed towards studying the outcome of conditionality, thereby neglecting the intricacies of the process of its application, which is of interest to this study. In addition, the model does not provide for the interference and use of conditionality by domestic actors. Hence, “political practices are likely to remain unrecognized when the range of empirical

²⁵³ For a detailed overview see Annex II.

²⁵⁴ For more see Introduction and Chapter three.

observations is framed as mere results of the impact of EU conditions” (Brusis, 2005b p.300).

In response, conditionality has been understood “by the process of its application rather than by an ideal-type assumed power relationship” (Hughes et al., 2005 p.3), a definition which underpins this dissertation, as explained in detail in chapter three. Understanding conditionality as a process necessitates an examination of both the supply and response side of the mechanism. Hence, the response and implementation of the conditions at the national level become an integral part of the conditionality instrument. As was argued by Hughes et al, “if the logic of conditionality works in practice, we should be able to track clear causal relationships between the Commission’s use of conditionality and the compliance of the candidate countries through policy, or institutional adjustments and normative change” (Hughes et al., 2005 p.2). By looking at the application and consistency of conditionality, this thesis sheds light on the practical every day operation of this mechanism.

Besides conditionality, national minority policies are contested as to both who constitutes a minority as well as in terms of the standards for these policies. In relation to the former, the research operated with national definitions of national minorities, which are also used by the EU in their assessments. Second, as there is no *acquis* in this policy area the European Commission had to find a way around and devise standards in relation to the specific on-the ground situation in the candidate countries. In the absence of its own standards on minority policies, the EU has been using standards on minority protection developed by the OSCE HCNM and CoE, as was in detail explained in the introduction and chapter three. As a result, the application and study of EU conditionality in this policy area has been confronted with the problem of ‘attribution’ (Rechel, 2009a). Nevertheless, in the Western Balkans, most of the international monitoring of implementation in relation to minority policies was channelled through the EU mechanisms of enlargement. In light of this a high level official of the OSCE in Macedonia confirmed in a discussion that “the only report that the prime minister will pay attention to is the Progress Report” through which the demands of both the OSCE and CoE (albeit in some cases selectively) are channelled.²⁵⁵ Similar arguments were posited in the research on the Eastern enlargement, by noting that many recommendations of these

²⁵⁵ Author’s interview with OSCE representative, Skopje, February 2011

international organisations remained ignored until the EU included them in their monitoring mechanisms (Rechel, 2009a). In this set of standards and organisations, “the FCNM [as the only binding instrument] has served as the EU’s shorthand for a measurable commitment to minority protection” (Sasse, 2009 p.26). For this purpose the research focused on the EU, while taking into consideration how the EU uses international instruments such as the FCNM in its conditionality exercise.

While using international instruments, foremost the FCNM, the EU has also been relying on national legislation in stipulating criteria in this policy area. In the Eastern enlargement, these have included citizenship and language rights, as well as specific policies for the Roma. This approach has been replicated in the Balkans where the EU has been deeply involved in the devising and implementing national policies and agreements on national minorities, confirming the largely contextual nature of EU conditionality. The country by country differences, have given rise to discussions about double standards in the EU and definitions of the minority condition as a “political and social construct”, recognised in this dissertation (Sasse, 2009 p.17).

Putting aside the theoretical and conceptual debates over conditionality and national minorities, the study of the role of EU in shaping national minority policies has implications for understanding several interlinked processes. First, it is relevant for grasping the process of Europeanisation of candidate countries and more widely the role of external actors in the democratisation processes in post-communism. Second, it is significant the democratic consolidation of the countries studied, as literature has concluded that this process in the region especially depends on the management of minority issues (Gordon et al., 2008). In such circumstances, the EU through its policy of conditionality affects the democratic consolidation from the perspective of shaping national minority policies. From this perspective, the case of the EU accession of the post-communist world provides a laboratory for the study of these phenomena and the relationship between them. The project of EU accession provides extensive leverage to the EU for influencing and shaping the minority policies of the candidate countries, both in the Eastern enlargement and in the Balkans today. In this sense, Dimitrova and Pridham (2004) discussing the Eastern Europe accession highlight that the “perception that the European Union and its ongoing enlargement [...] are central factors in the process of democratisation in the region is so widespread among policy makers, elites and the epistemic community, that it is almost impossible to question it”

(p.105). This thesis has questioned this claim by looking closely at the everyday operation of conditionality in two of the candidate countries of the Western Balkans.

Recognising these theoretical challenges and the significance of the EU in shaping national minority policies for the democratic consolidation, this thesis focused on the following research questions:

1. How has EU conditionality on national minority policies in Macedonia and Croatia been implemented between 1997 and 2004, and post-2005?
2. How has the EU used the Council of Europe Framework Convention on National minorities and the national legislation as elements of EU conditionality on national minority policy between 1997 and 2004 and post-2005?
3. How consistent has EU conditionality been in relation to national minority policies in Croatia and Macedonia been between 1997 and 2004 and post-2005 within the specific case studies?
4. What role have domestic actors played in the application of conditionality in relation to national minorities in Croatia and Macedonia between 1997 and 2012?
5. What are the implications of the Europeanisation by conditionality in relation to minority policies for democratic consolidation of Croatia and Macedonia?

In order to respond to these questions, the dissertation used process tracing of official EU and national documents, as well as interviews with 70 stakeholders at the EU and national level, including officials, civil society representatives as well as other international. The data collected through archive and field work were analysed at three levels. First, the research examined the devising of the EU priority through the formal Commission documents and interviews with the EU officials in Brussels. Second, the study looked at the domestic response of the national governments to the EU conditionality through the national strategic documents, adoption of legislation and policies and their implementation. Lastly, the interview data from the national level provided insight into the local understanding of conditionality. The reports on the FCNM and the Opinions from the Advisory Committee were analysed in relation to their specific time of publication and their relationship with the priorities in the EU documents. Overall, the thesis engaged in a study of the “document dialogue” between the EU and the

national level and triangulates these findings with the interview data. As to the latter, Hall (2012) has argued that when the decisions or actions of key participants are crucial to the outcome, by comparing the statements and actions of those participants, the process analyst can often establish the relative influence various factors had over them” for explanation purposes (p.314). The objective of this approach was to recreate as closely as possible the intricacies and the flow of information in the process of EU accession.

The dissertation adopted a before and after approach (See George and Bennett, 2005) in relation 2005 when analysing the period between 1997 and 2012.²⁵⁶ Whereas until 2005 the countries studied were in the portfolio of the Directorate General for External relations, post-2005 they were both candidate countries for accession transferred to the Directorate General for Enlargement. As a result, different mechanisms and tools of EU engagement were used in both periods. Whereas in the former the European Commission presented general reports on the countries in the region, since 2005 and the publication of the opinions on membership these countries become subject to more detailed monitoring of their general progress including minority policies foremost due to the establishment of a new chapter in the negotiations process. Thus, in two separate chapters, the thesis examined the implementation of EU conditionality and the consistency in the use of FCNM and specific national legislation and policies as elements of EU conditionality. In addition to examining the consistency and application of the EU conditionality over time both before and post-2005 horizontally, this thesis in chapter seven has also looked into the representation of minorities in the public sector. This is a specific policy which has been a novelty in the Western Balkans’ enlargement process. By looking both at the consistency of conditionality at a general level and examining closely a specific policy this thesis looks both at the macro and micro dimensions of the conditionality mechanism. In this way, the study responded to with literature’s recommendations for tracking the impact on specific policy-making area, unlike majority studies which emphasize “the salience of conditionality at the macro-political level” (Hughes et al., 2005 p.11). The following sections present the findings on each of the separate research questions, how they fit or challenge the literature on conditionality and provide recommendations for further research.

²⁵⁶ For more on methodology see chapter two.

8.2 Findings of the thesis

8.2.1 EU conditionality between 1997 and 2012

In the period 1997-2005, examined in chapter five of the thesis, EU conditionality towards the countries studied was streamlined through two initiatives: the 1997 Regional Approach and the 2001 Stabilisation and Association approach. Although the Regional Approach formally considered minority policies of primary importance for the relationship with the region at this point in time, the analysis pointed that there was no consistent approach in the EU and national documents. The European Commission reports did not monitor the specific conditions in relation to minorities stipulated in the Conclusions of the General Council in 1997 which set the framework for the relations between the EU and the countries. Overall, prior to the launching of the SAA process in 2001, the Commission has fleetingly addressed selected minority issues at the country level at different points in time. Hence, there was no consistent approach on the issues addressed in both countries, or within one country chronologically. Second, there is no attempt to go beyond the legislative dimensions of minority policy and the assessments are repeated from one year to another. The approach of the EU in this period highlights the difficulties of employing conditionality without the objective of membership, as has been confirmed in literature as well.

The launching of the SAP is the main turning point in the first period studied which introduced the more detailed reports on the SAA which the Commission prepared until 2004/2005. In general, the SAA reports are more detailed and extensive than the Regional Approach reports. In addition, in this period, the national governments responded by preparing their action plans for implementation of the SAA. However, the analysis does not indicate a link between the further structuring and elaboration of the documents with the improved consistency of conditionality on minority policies. Moreover, as explained in chapter five of the thesis there is virtually no follow up or similarity of obligations between the reports of the first two years (1997-1998) and the last two years (1999-2000). The lack of progress in terms of structuring the conditions on minority policies is also reflected in the national strategic documents (Action Plans for implementation of the SAA), which were prepared by the respective administrations of the countries in response to EU conditionality.

In 2004/2005 qualitative changes occurred both in terms of the status of the two countries in terms of their EU accession and the treatment of national minority policies in the context of EU enlargement. In this period, both countries

became candidates for EU accession and the European Commission launched its new approach with the chapter 23: Judiciary and fundamental rights, streamlining minority policies in the accession negotiations, rather than dealing with them as a part of the political criteria. Since 2005, new instruments of EU monitoring and conditionality were introduced, such as the regular Progress Reports, the European partnerships, as well as the European Commission Enlargement Strategies. In addition, the countries' governments started preparing more detailed documents as the National Action Plans for the Adoption of the *Acquis* and (national) Regular Progress reports. Furthermore, in this period the European Commission started negotiations with Croatia providing more detailed benchmarks on every aspect of EU accession, including minority policies. In Macedonia, there were also several benchmarking experiences, including the key priorities and visa liberalisation roadmap. The study of this period therefore provided for this research tools to assess whether in the post-2005 period these new instruments contributed to overcoming some of the problems identified for the pre-2005 period.

8.2.2 Use of FCNM and national legislation as elements of EU conditionality pre and post-2005: consistency still missing

Use of FCNM

In relation to the use of international instruments, the research focused on the use of the FCNM as the only relevant regional instrument dealing solely with minority issues and to which both countries are signatories. The focus on the FCNM originated also from the expectations in literature as to the need for formal/structured incorporation of this convention in the EU accession process and the experience of the previous enlargement (See Hillion, 2008, Kochenov, 2006). As a result of its importance, studies on the EU enlargement at the time have stressed the need for a shift for incorporating the FCNM monitoring in the EU accession (Kochenov, 2006). The analysis indicated that whereas the Commission during 2002-2004 made fleeting references to the FCNM in relation to Macedonia, the FCNM is referred to only in the Opinion on the application for membership of Croatia in 2004. Moreover, besides the occasional use of the FCNM occasionally there are no direct references to the Reports of the Advisory Opinions on the implementation of the FCNM in both countries which would have provided a more consistent approach to conditionality. The interview data indicate that the FCNM was referenced and used more as a benchmark in the discussions

between the European Commission and national level stakeholders than is the case in the formal EU documents, highlighting the distinction between formal and informal conditionality, discussed in chapter three of the thesis. Still, the tracing of the process of the EU, national documents and interviews did not point to any consistent use of the Convention.

The analysis of the post-2005 period in chapter six pointed that there is still no consistent use of the FCNM as a benchmark by the European Commission. In Macedonia, in fact, the national government denounced the FCNM in terms of its usefulness because the national legislation provides more advanced protection of national minorities than the protection by Convention, once it had obtained the status of a candidate country.²⁵⁷ In Croatia, the European Commission fleetingly used the FCNM in its documents and although there was potential to use it in the negotiations, as underlined in literature and in my interviews this was not the case. The document analysis showed that the EU did not use the FCNM consistently in either of the case studies over time. The interviews with all the target groups were also quite illustrative that there has been no single approach on the role of the FCNM and its use by stakeholders over time and between the various groups of interviewees. Overall, the study of the use of the FCNM in EU conditionality in the Macedonia and Croatia in the periods analysed in chapter five and six highlighted that the EU still uses this convention fleetingly and without consistency, confirming the persistence of the similar findings on the Eastern enlargement (See Kochenov, 2006).

EU and national legislation

The second element of analysis in chapters five and six was how the EU used national legislation and agreements in Macedonia and Croatia. The use of national legislation as a reference point for EU conditionality was present in the previous enlargement and even more so in the Western Balkans having in mind the very detailed minority rights regimes in these countries and the EU influence over them.²⁵⁸ Hence, the issues with which the Commission dealt were country specific. In the pre-2005 period, in Croatia, this entailed the adoption of the Constitutional law on national minorities. While the Commission notes in its first reports (1998-1999) the delay in the adoption of this law, in the following two years it solely lists its formal provisions, rather than focusing on the

²⁵⁷ See chapter six for more details.

²⁵⁸ See chapter four for more details.

implementation. In relation to Macedonia between 2002 and 2004 the European Commission focuses generally on the broad task of “implementing the Ohrid Framework Agreement”, as highlighted in chapter six. There were attempts to follow up on the implementation in relation to the equitable representation of minorities. Only in the case of Macedonia, the European Commission in the last report of 2004 refers to the Government plans and targets for realisation of the equitable representation strategy, which is separately examined in chapter seven. In the other cases, there is no evident tendency towards tracing a follow up of the activities. Furthermore, the Commission reports pay very little attention to any implementation and are focused on the adoption of legislation and strategies, which is reflected in the national programmes as well and was supported by the thesis’ interview data.

Post-2005, in terms of the use of national legislation as a tool of EU conditionality two major policies topped the agenda in both countries – the law on languages in Macedonia and the establishment and functioning of the local councils for national minorities in Croatia, which were studied in chapter six. The law on languages in Macedonia illustrates the role domestic actors and politics play in the creation and implementation of conditionality, i.e. its bottom-up dimension. In this case namely, an issue which was initially not a part of conditionality, after its adoption at the national level became subject of monitoring of the EU and one of the key elements of the EU accession criteria. This example therefore confirms that conditionality in this policy area cannot be considered as a clear-cut variable due to its changes over time, thus supporting the use of process-based approaches in its study. At the same time it also shows the bottom-up dimension of conditionality, discussed in the following section.

The analysis of the establishment and functioning of the local minority councils in Croatia illustrated the lack of consistency and follow up in the EU’s approach to minority conditionality in this specific policy. While prior to the start of the accession negotiations the European Commission dealt in detail with the functioning of the councils, during the accession negotiations this issue was not tackled, as was illustrated by the document analysis and stakeholders views in chapter six. The analysis also showed discordance between the progress reports and the negotiating documents although they’re both prepared by the Commission officials, once more highlighting the problem of stipulating consistent conditionality in the absence of the *acquis*. Moreover, although experience from the last enlargement concludes that the EU influence is highest during the

negotiations, the functioning of the councils has not advanced as a result of the EU negotiations, despite the financial support from the Union through the pre-accession assistance.

In light of these findings on the post-2005 period, this thesis largely questions the role of the new chapter 23 dealing with judiciary and fundamental rights, including national minority rights in the EU negotiating framework. Even though the chapter 23 dealing with judiciary and fundamental rights introduced in 2005 was presented by the EU commission as a step towards setting standards, the analysis does not confirm this. In fact, the examination of the benchmarks in relation to minority policies in the European Commission screening documents and negotiation reports shows that they share the same lack of consistency identified in studies on the previous enlargement. The stakeholders at the national level both from the state institutions and the CSOs were highly critical of the chapter as it did not offer further “structuring” of minority conditionality. Hence, criticisms on the vagueness of the EU requirements and describing the negotiations as a guessing exercise were not uncommon. These findings largely confirm the assessment of research on the Eastern enlargement which underlined the problem of setting standards in non-acquis areas. The primary critique in literature in relation to minority policies conditionality is that “while the EU conditionality has anchored minority issues in the political rhetoric of the candidate states, the EU had little to offer in terms of substantive guidance”, as is generally the case with the political criteria (Sasse, 2009 p.24, see also Haukenes and Freyberg-Inan, 2012). The empirical analysis showed that despite attempts at setting standards with the new chapter 23 in the negotiating process, this critique is largely still valid.

8.2.3 Domestic Actors – more than a receiving end of conditionality

The study of several of the policies examined in this thesis has pointed to the decisive nature of the domestic actors for the process of application of conditionality and its outcome. All of the studied policies highlighted the role of domestic actors from different perspectives. First, the example of the law on languages in Macedonia illustrated the role domestic actors in the operation of conditionality, i.e. emphasizing its bottom-up dimension. It also highlighted the way in which national actors can choose to introduce legislation and policies at the national level that can become part of EU conditions at a later stage. With this conclusion, the analysis largely confirms the findings of authors such as Brusis that

emphasize the importance of domestic factors in the outcomes of conditionality in areas not regulated by the *acquis* (Brusis, 2005b). The support for adopting the law in fact in the case analysed was dependent on the minority party and its participation in government, i.e. ability to realise its own agenda. In this case namely, an issue which was initially not a part of conditionality, after its adoption at the national level became subject of monitoring of the EU and one of the key elements of the EU accession criteria.

Chapter seven dealing with the representation of the national minorities in the administration, also clearly illustrated the decisive role of domestic actors in the operation of conditionality. Analysing the application of EU conditionality in relation to equitable representation, it underlined the dependence of the success of conditionality on the domestic actors, even in cases where the EU set clear guidelines. Through the two cases of Macedonia and Croatia, it illustrated how a similar EU condition can result in diverging outcomes at due to the differentiated responses/non-responses at the national level. In Macedonia, despite the support for this policy at the EU and national level, its implementation has been met with discontent due to the political party capture of the policy and its violation of the merit principle. The violation of the merit principle, as was shown stands in sharp contrast with the requirements of the EU for a functioning and effective administration, which also according to literature is an indispensable element of democratic consolidation (See Przeworski, 1995). At the same time, the EU recommendations were broadly interpreted and used in substantiating the establishment of new minority institutions such as the Agency for the rights of the smaller communities. The establishment of this Agency however, is widely presented as non-conditionality by the EU officials illustrating the increasing scope for interpretation in areas not regulated by the *acquis*. This example however, underlines the potential for interpretation left to the national actors in relation to the political criteria, specifically minority policies.

In the Croatian case, the representation of national minorities in the local and regional self-government units, the state administration, judicial bodies and the public administration is a recurring key priority in the Accession Partnerships for Croatia (Council, 2004, Council, 2006a). Stakeholders at the national level confirmed the significance assigned to this condition highlighting that “the primary EU condition in relation to the national minorities in Croatia was the

representation in the administration”.²⁵⁹ However, the response at the national level has been almost non-existent until the later phases of the accession negotiations. In the last couple of years and the stipulation of this condition as a key element of EU accession in the negotiations, the issue has been put formally higher on the national agenda. Nevertheless, in general most of the stakeholders have confirmed that this has been one of the weakest elements of Croatia’s accession process, met with weak compliance and highly contested at the national level. The Croatian example therefore confirms the potential for shallow Europeanisation as coined by Goetz (2005) and underlines the significance of the domestic actors for the success of conditionality.

8.2.4 Europeanisation and democratic consolidation – a dynamic relationship

On the basis of the findings of this dissertation on the role of the EU in shaping national minority policies, the last research question aimed to reflect on the implications of these processes for the democratic consolidation of the countries studied. In academic literature, there have been contrasting assessments on the role of the EU in minority policies in the candidates for accession, as the policy area of primary interest of this study. On the one hand, more theoretically oriented research has considered that the EU through its mechanisms has had positive influence on minority policies as a reinforcement or lock-in mechanism (Schimmelfennig, 2002, Vachudova, 2005). Empirical studies, however, have been inconclusive and have questioned the possibility of isolating the effects of the international actors and warned against the tendency to overestimate their influence (Sasse, 2009, Rechel, 2008, Grabbe, 2003). This latter strand of research has brought contrasting results by arguing that while in some cases the EU has fostered inter-ethnic cooperation, in others it has increased polarisation (Tesser, 2003, Schwellnus et al., 2009). Hence, the “Europeanising effect of EU conditionality has so far been generally assumed rather than empirically proven, while deep divergences across national and policy contexts persist” (Rechel, 2008 p.171). Later on, Rechel (2009a) argues that “contrary to what could have been expected in the context of EU accession, there does not seem to have been a general trend towards improved protection of minorities” (p.10).

²⁵⁹ Author’s interview with civil servant in the Ministry of Foreign Affairs, Brussels, 5 December 2010.

Overall, the analysis of Macedonia and Croatia confirms the already identified potential for shallow Europeanisation (Goetz, 2005) through fake compliance in political conditionality which has specifically been raised in the literature on the Western Balkans (Noutcheva, 2007). The disagreement over the conditions increases the scope for use of conditionality by domestic actors for their own agendas and also for locking in polarisation through supporting contentious policies (Brusis, 2003, Sasse, 2009). Hence, the process based approach necessitates further emphasis on the decisive nature of the domestic actors. Both cases illustrate that “domestic actors justify their decision as driven by EU conditionality”, especially in areas of context-specific standards such as minority policies (Brusis, 2005b p.297).

The problem of compliance in this policy area was specifically demonstrated in the case of the operation of the local councils as well as the representation of minorities in the administration. In both cases the weak compliance has not advanced national minority policies at the domestic level. The case of the local councils in Croatia illustrated how policies that have been widely recognised as unsuccessful (including by the EU as supported by the interview data) perpetuate partly due to their inclusion in EU accession conditionality. The conclusion of the accession negotiations of Croatia despite the continuous low level of representation of national minorities in the administration in Croatia indicates that the policy area despite declarative support was not of primary importance to the EU. At the same time, as was highlighted by an interviewee it also sent a worrying signal to the governments in Croatia over the interest of the EU in the national minority issue.

While fake compliance has been a common feature identified in the Eastern enlargement as well, the case of the representation of minorities in the administration in Macedonia showed how a specific EU supported policy can be used by domestic actors for advancing their own agendas and lead to polarisation. This finding confirms findings of the literature on Europeanisation in relation to the potential for retrenchment, i.e. policy backsliding (See Radaelli, 2000). In Macedonia, representation of minorities in the public sector was part of the OFA obligations and was also a formal element of the EU Progress Reports and the European/Accession Partnerships. In response, the national strategic documents contain information and planned activities for the adoption of the necessary documents and implementing this principle. Hence, it is a case of ‘formal’ inclusion and acceptance of conditionality both formally and at the elite level.

Still, even though the policy is formally being implemented it has resulted in non-merit employment and marginalising of the smaller communities. Hence, even when there was existing consensus between the EU and national authorities over the conditions as in the case of the equitable representation policy where the benchmarks were precisely defined, domestic factors at the national level through as party capture can use conditionality for advancing their own agendas. In such cases the instrumental use of EU conditionality at the national level can lead to perpetuation of detrimental policies and can even lead to further polarisation. In this sense, conditionality can also 'lock-in' deeper structural issues such as polarisation and segregation (Sasse, 2009 p.28).

Whereas this policy illustrated most clearly the potentially conflicting relationship between Europeanisation by conditionality and democratic consolidation, the negotiating process of chapter 23 in Croatia also raised concerns. As explained in chapter six of the dissertation, the late opening of the negotiations for this chapter did not provide sufficient time for dealing with the issues concerned and the benchmarks and indicators were not considered to have added consistency to the minority conditionality.²⁶⁰ Effectively, the negotiations for the chapter 23 lasted less than a year and a half, although the entire negotiations process with Croatia lasted six years. On a different note, stakeholders considered the confidentiality of the negotiations process as an impediment for the effective participation of minority organisations and representatives. The adoption of strategic documents such as Action Plans for the minorities without their participation most clearly illustrated these difficulties.

8.3 Relevance of the thesis for the theoretical understanding of EU conditionality

Whereas at its beginning, this thesis primarily aimed at filling an empirical gap in literature in terms of the study of the Europeanisation by conditionality in the Western Balkans, its findings also carry broader theoretical significance. Thus, the

²⁶⁰ These criticisms of the conditionality process could have potentially been recognised within the EC itself since, following the end of the Croatian accession negotiations in October 2011, the EC announced that the first and the last chapter to be opened and closed in the upcoming accession. negotiations will be Chapter 23 - Judiciary and Fundamental Rights and Chapter 24 - Justice, Freedom and Security, which will be continuously monitored based on specific benchmarks and action plans EC 2011b. Enlargement Strategy and Main Challenges 2011-2012. *Communication from the Commission to the European Parliament and the Council* Brussels: Commission of the European Communities.

research contributes theoretically with insight relevant for the analysis of EU conditionality in *non-acquis* areas and its link with the processes of democratic consolidation. In relation to the former, through its empirical examination the thesis has highlighted a set of problems of accommodating the study of *non-acquis* conditionality in the external incentives model, as the dominant conceptual tool for the study of this mechanism. As outlined in chapter three this model starts from a premise of clearly stipulated EU criteria, in order to assess the likelihood of their acceptance depending on the credibility of the EU and the low domestic costs of rule adoption (Schimmelfennig and Sedelmeier, 2005b). The findings of this thesis contest the notion of agreed conditionality in *non-acquis* policy areas on several levels. First, the changes of conditionality over time traced and demonstrated in chapters five, six and seven have highlighted the problem of treating conditionality as a constant variable. As this research has illustrated, the EU conditions change in their content from year to year, thus failing to satisfy the requirements of the external incentives model. Hence, the changes over time have underlined the need to look at the conditionality as a process over a longer period of time, rather than as an agreed condition at the EU level.

Second, in the specific policy area under examination in this study the reliance of the European Commission on assessments of international organisations and the use of domestic legislation as elements of conditionality create further inconsistencies when studying this phenomenon as an independent variable. By tracing the use of the FCNM by the EU as a benchmarking tool in the area of national minority policies, the thesis has shown the continuous sporadic references to the Convention by the EU, thereby contributing to the lack of consistency in the application of conditions. At the same time, the reliance on other international organisations, such as the CoE for the assessment of the conditions exacerbates the problem of attribution, generally present in Europeanisation research. Whereas not dealing strictly with issues of causality, the dissertation has shown that the study of EU conditionality in this policy area needs to trace the construction and the application of the EU condition in order to be able to account for the potential formal and substantive policy change and the multitude of actors involved in it.

Third, the fleeting nature of the conditions was also illustrated through the different understandings between the numerous stakeholders involved in their application and implementation. The research shed light on the various

conceptions of the criteria within the European Commission, as well as between the Commission and national authorities. On the one hand, the thesis drew attention to the dissimilar expectations of the EU requirements and their fulfilment on the side of the Commission directorates in Brussels and the Delegations of the EU in the candidate countries. In this sense, in addition to the already determined variations of policy approaches horizontally between different directorates within the Commission (See Nugent, 1997) it illustrated a further dimension of discordance on a vertical level between Brussels and the EU representation on the ground in the candidate countries. This form of discordance is important as the domestic actors can potentially be subject to varying EU requirements, thus complicating the analysis of conditionality. On the other hand, the research also illustrated the differences in the understanding of EU conditionality between the Commission and the national authorities responsible for the implementation of the accession criteria. This latter dimension undermines the potential for building a consensus on the outcomes to be fulfilled in response to the EU criteria. In such circumstances the understandings of the stakeholders become an integral part of the conditionality mechanism. In turn, these varying interpretations of the criteria by the stakeholders exacerbate the problem of fitting the study of this phenomenon within the external incentive model, which is grounded upon the premise of mutually agreed and clear criteria.

Fourth, the thesis demonstrated the role of domestic actors as integral elements of the conditionality mechanism. Through the analysis of the representation of national minorities in the administration as well as the example of the law on languages in Macedonia, the thesis illustrated that domestic actors are not solely at the receiving end of conditionality, but rather an integral element of the processes under examination. As this research has shown, domestic actors at many points also set conditions, which have partly afterwards been used by the Union and especially the Commission as benchmarks in the accession process. In light of these findings, the thesis highlighted that one cannot understand the conditionality process predominantly as a top-down phenomenon, since in non-acquis policy areas which stand at the core of this research the domestic actors are an integral part of this mechanism. In this manner, the research emphasises the importance of the bottom-up dimension in the construction of the EU conditions, as well. The latter segment is often overlooked in the studies of EU

conditionality which understand the Europeanisation of candidate countries solely through a top-down perspective.

In addition to the above explained significance for the study of EU conditionality, this thesis also carries theoretical insight for the relationship between Europeanisation by conditionality and democratic consolidation, linking these two strands of academic literature. In this context, the thesis has questioned the presupposed positive relationship between EU conditionality and democratic consolidation, established in earlier literature on EU enlargement. In fact, by analysing the role of the EU in shaping national minority policies over a period of fifteen years and in a multitude of areas, the thesis has highlighted the deeply contextual relationship between these phenomena in the countries and policies studied. More importantly, by examining a broad set of policies included in EU conditionality, it has illustrated the potentially divergent trends of the two phenomena. This was especially demonstrated in the last chapter which focused on the specific policy of representation of national minorities in the public sector. This chapter pointed to the persistent reticence in the fulfilment of the EU conditions and the manner in which EU conditionality can contribute to embedding polarising policies in relation to national minorities.

In terms of broader theoretical discussions, by demonstrating these potentially divergent trends between conditionality and democratic consolidation the thesis confirms the arguments of earlier literature for potential *retrenchment* through Europeanisation. As explained in the third chapter of the thesis, retrenchment as a variant of the outcomes of Europeanisation was originally defined by Radaelli (2000) in relation to the member states of the EU, implying that the “national policy becomes less ‘European’ than it was” (p.15). This thesis has uncovered a largely comparable phenomenon in the context of the acceding countries and the Europeanisation by conditionality in relation to the national minority policies. The involvement of the EU was instrumentally used at several points in the accession process by the national actors as a rationale for perpetuating polarising policies. In turn, a number of these policies, such as the representation of national minorities in the administration, were also conflicting with other European norms and had detrimental impact in other policy areas (i.e. establishing a functioning administration).

In light of these theoretical contributions, the thesis carries significance both for the study of Europeanisation by conditionality and the study of democratic

consolidation in the conditions of post-communism. By examining the role of the EU in shaping national minority policies in Macedonia and Croatia, it has shed light on the role of international actors in the democratisation and democratic consolidation. Overall, it has contributed to demystifying the manner in which the EU as the most significant actor in post-communist Europe has influenced and shaped national minority policies, as an area of crucial importance for democratic consolidation.

8.4 Avenues for further research

Despite the attempt of this thesis to deal with a multitude of actors involved in the minority policies in these countries, several aspects have not been tackled and remain to be further examined. While focusing on the minority question, this thesis did not examine the role of the kin states in the operation and study of conditionality, which has been recently a subject in the wider literature on minority policies. This segment has been most prominent in the study of Russia as a kin state in the case of the Russian speaking minority in Latvia and Estonia. Respectively, Schulze has argued that Russia's activism has been a key element for the understanding of the "low level of cultural match between European and domestic norms on citizenship and language" (Schulze, 2009 p.296). Galbreath and McEvoy (2010) further extended the study as to whether the EU has had an effect on the wider geopolitical relationship between the host state and the kin state over national minorities. These issues have largely been left out of the thesis as in the context of the Western Balkans they carry implications for the regional cooperation which was also an element of conditionality in this region (For an examination on the link between Albania as a kin state and the minority policies in Macedonia as a host state see Ortakovski, 2001, see also Vasilev, 2011). Moreover, if incorporating at the role of kin states for the minorities, Macedonia and Croatia would need to be studied separately with Albania for the former, and Serbia and Bosnia as kin states of minorities in the latter. While not examined in this thesis, a separate examination of the role of kin states in the context of conditionality in relation to national minority policies would be a way forward for developing the findings of the dissertation.

Second, as already explained in the third chapter, due to the specificities of the Roma minority it was not dealt with in detail in this dissertation. Although partly addressing the Roma issue through the macro and policy analysis in relation

to EU conditionality, the research does not deal with the intricacies of the Romani question. It considers that the specific forms of mobilisation of Roma in the Balkans and in Europe in general would have necessitated focus on an additional set of literatures which would have made the thesis unmanageable. Still, in a separate project dealing with the process of visa liberalisation and minority policies I have found that especially in relation to the Roma, the EU conditionality has in fact also brought unwanted consequences in terms of limiting the right to the freedom of movement (See Kacarska, 2012). This research also confirmed the largely specific position of the Roma which could not be sufficiently examined in a comparative project as this thesis. On the other hand, the design of the dissertation could be used for examining the Europeanisation by conditionality of the Roma in the regional context, especially in light of various EU initiatives in this field, such as the EU Framework for National Roma Integration Strategies (EC, 2012c).

Since the writing of this thesis, Montenegro and Serbia have both obtained the status of candidate country for EU accession and the former was the second country after Croatia to start the accession negotiations in 2012. For Montenegro, the Commission has implemented a novel approach by deciding to screen and open the chapter 23 on judiciary and fundamental rights in the beginning of the negotiations, rather than at the end. Hence, the case of Montenegro would be an interesting example to study on two levels. First, to examine the issues that the European Commission will include in the negotiating framework on this policy area once the screening is finished. Second, upon the concluding of the accession negotiations, Montenegro would be an illustrative example for research as to whether the criticisms that accompanied the Croatian experience would be overcome with this new approach of dealing with these topics from the beginning of the negotiations.

Lastly, the Eastern enlargement and the post-accession developments have shown quite lucidly that enlargement does not put an “end to the minority question” (Hillion, 2003). Sasse (2008) in her analysis of post-accession compliance in the area of minority rights in the cases of Latvia and Estonia indicates that despite formal compliance, serious problems exist in practice (p.731). Schwellnus et al (2009) focusing on four countries of the Eastern enlargement demonstrate a “marked decline in positive developments after accession, but no revocation of minority protection rules” (p.18). Hence, post-accession, the minority policies are likely to stay and dominate the political

agenda as well and in this sense Croatia and its first experience as an EU member will shed light in a couple of years as to the issue of sustainability of EU conditionality post-accession. Early developments among the public were quite worrying with massive protests against the use of the Cyrillic alphabet on street signs in Vukovar; however, it is still too early to assess the country's post-accession compliance (See EuroNews, 2013, AlJazeera, 2013).

8.5 Looking back at the concepts and methods

This thesis has shown that study of minority policies in the EU accession process in Macedonia and Croatia can be explained and fits a process-based approach to conditionality (See Hughes et al., 2005) at the same time emphasizing the significance of domestic actors not only for the outcome (See Brusis, 2003), but also for the process of applying conditionality. In terms of the methodological approach and the framework of analysis, this research has demonstrated that conditionality needs to be analysed as a process due to the changes over time and the multitude of actors involved in its application. Approaching conditionality over time and focusing on its changes, this research has argued that the conditions with respect to minority policies as non-acquis areas cannot be studied as an independent variable. In this sense, the conditions in minority policies and their application are a result of the interactions between the EU and national actors.

In addition, the changes in conditionality over time point to its flexibility and make its analysis dependent on the specific period studied. As the analysis in relation to the Law on languages indicates, the conditions can change over time as there is no consensus over what conditionality in this policy area entails. Since issues and policies can become elements of conditionality at different points in time, an examination over a longer period is indispensable for understanding the complexities of EU conditionality. This discordance has raised question marks over the possibility of enforcing conditionality if the standards are not commonly defined and the conditions change extensively over time. While generally this thesis confirms the persistence of the "conditionality gap" (Hughes et al., 2005 p.174), it also highlights the flexibility of the included criteria, both in the documents and among stakeholders.

On a methodological level, this research has confirmed therefore the difficulties of framing conditionality in relation to national minorities within the external incentives model as the dominant framework for the study of conditionality. The use of both EU and national primary documents coupled with

interviews with stakeholders were essential for the analysis to demonstrate the flexibility of the conditions and the lack of consensus among the stakeholders. The different understandings of conditionality among stakeholders, was at the same time a hindrance which necessitated careful reading of documents over time in order to trace the period when and whether a certain policy became part or was removed from the criteria for EU accession.

Both cases studied challenge the literature on conditionality in several dimensions. First, Croatia disproves previous findings of the negotiations for accession being a *guarantee* for fulfilment of the conditions. Dimitrova and Pridham (2004) have argued that “once promising applicants have become locked into the process of negotiations, the resultant pressure placed on the candidates further guarantees the fulfilment of the required political conditions, since any backtracking [...] could harm the successful outcome” (p.109). Croatia through the weak follow up of the EU conditions especially in relation to employment of minorities as well as the example of the local councils of national minorities shows that the negotiations despite the further structuring and increase of benchmarking are not a guarantee of success.

Second, the example of the equitable representation policy in Macedonia questions whether the ‘specific benchmarks and plans’ in relation to non-*acquis* areas which the European Commission announced would inevitably breed effective policies. This was demonstrated in the previous chapter on employment of minorities, a policy which was assessed against specific benchmarks and quantitative and qualitative targets. Hence, the policy was not vague and was supported by policy entrepreneurs at the national level. Whereas at a general level of minority policies the conditions have remained vague, in areas such as the representation of minorities in the public sector the EU requirements were more specific. This contradiction has been identified in literature as a paradox of EU democracy promotion policies that fluctuate between detail and ambiguity (Haukenes and Freyberg-Inan, 2012). At the same time, the implementation of this policy raised substantive concerns regarding its conflict with the merit principles in employment and building an effective and functioning administration. As such, this policy raises concerns for the prospects of the democratic consolidation in the country, both in relation to minorities and the functioning administration.

Overall, this thesis questions the potential of transforming national minority policies by applying conditionality in the context of EU accession.

Through a largely empirical study of conditionality and relying on stakeholders' views, it contributes to de-mystifying the EU accession process with respect to political conditionality. It has shown that despite calls for further reliance on international instruments, the EU in the Balkans has not used systematically the FCNM, as the one binding instrument in relation to minority policies. Its findings have illustrated that conditionality changes over time and is dependent upon the domestic actors and their use of the conditions. The study of Macedonia and Croatia has shown the different responses this mechanism can trigger at the national level, which can be linked to the increasing scope for interpretation of the conditions as well as the agendas of the national actors. By studying countries where the minority policies are exceptionally important and the EU has engaged substantially in the institutional and policy set-up, this research has confirmed the fleeting nature of the EU conditions and their potential for locking in potentially polarizing policies. In response, it has shed light on the potentially divergent trends of the processes of Europeanisation and democratic consolidation.

9. Annex I: Chronology of relations between the two countries and the EU
Chronology of relations between the Republic of Croatia and the European Union²⁶¹

26 February 1996	The regional approach established a framework for relations with the five countries of the region: Bosnia-Herzegovina, Croatia, Macedonia, Albania and the Federal Republic of Yugoslavia
May 1999	The European Commission proposes the creation of the Stabilisation and Association Process for Albania, Bosnia and Herzegovina, Croatia, Macedonia and the Federal Republic of Yugoslavia
24 November 2000	The Zagreb Summit – The start of negotiations between Croatia and the EU on the conclusion of the Stabilisation and Association Agreement.
14 May 2001	The Stabilisation and Association Agreement was initialled in Brussels
29 October 2001	The Stabilisation and Association Agreement and the Interim Agreement signed in Luxembourg
21 February 2003	Croatia applied for membership of the European Union
20 June 2003	Member States leaders adopted ‘Thessaloniki Agenda for Western Balkans’, thus verifying the European perspective of the countries from the region. This document has defined the accession instruments in the stabilisation and association process;
10 July 2003	The European Commission handed over to Croatia a Questionnaire consisting of 4,560 questions
9 October 2003	The Republic of Croatia submitted to the European Commission the answers to the Questionnaire
20 April 2004	The European Commission issued a <u>positive opinion (avis) on Croatia’s Application for Membership of the European Union</u>
18 June 2004	The Republic of Croatia granted the status of candidate

²⁶¹ Shortened and amended version from www.mvpei.hr.

	country for membership of the European Union
13 September 2004	The Council of the European Union adopted the European Partnership for the Republic of Croatia
17 December 2004	The European Council set the start date for accession negotiations with the Republic of Croatia
1 February 2005	The Stabilisation and Association Agreement entered into force
3 October 2005	The launching of negotiations between the Republic of Croatia and the European Union
20 October 2005	The beginning of screening
20 February 2006	The Council of the European Union adopted the Accession Partnership for the Republic of Croatia.
18 October 2006	Screening concluded
12 February 2008	The Council of the European Union accepted the revised Accession Partnership for the Republic of Croatia.
30 June 2010	Intergovernmental Conference; chapters opened: 8 Competition policy, 23 Judiciary and Fundamental rights, 31 Foreign, security and defence policy; chapters provisionally closed: 5 Public Procurement and 16 Taxation.
30 June 2011	Intergovernmental Conference; chapters closed: 8 Competition Policy, 23 Judiciary and Fundamental Rights, 33 Financial and Budgetary Provisions, 35. Other Issues. Accession Negotiations formally closed.

Chronology of relations with the Republic of Macedonia and the European Union²⁶²

26 February 1996	The regional approach established a framework for relations with the five countries of the region: Bosnia-Herzegovina, Croatia, Macedonia, Albania and the Federal Republic of Yugoslavia
May 1999	The European Commission proposes the creation of the Stabilisation and Association Process for Albania, Bosnia and Herzegovina, Croatia, Macedonia and the Federal Republic of Yugoslavia
5 April 2000	The first round of negotiations between Republic of Macedonia and EU officially commenced relating to the SAA.
24 November 2000	On the margins of the Zagreb Summit the SAA was initialled;
9 April 2001	The SAA with Macedonia was signed. At the same time Interim Agreement on Trade and Trade-related Matters between the European Communities of the one part, and the Republic of Macedonia, of the other part was signed, entering into force on 1 June 2001;
20 June 2003	Member States leaders adopted 'Thessaloniki Agenda for Western Balkans', thus verifying the European perspective of the countries from the region. This document has defined the accession instruments in the stabilisation and association process;
1 April 2004	The Stabilisation and Association Agreement entered into force;
22 March 2004	The Government of the Republic of Macedonia submitted the application for EU membership;
1 October 2004	The European Commission submitted the Questionnaire to the Government of the Republic of Macedonia;
14 February 2005	The Republic of Macedonia submitted the Answers to the

²⁶² Shortened and amended version
<http://sep.gov.mk/Default.aspx?ContentID=12>.

- European Commission Questionnaire;
- 9 November 2005** The European Commission published the opinion on the candidacy of the Republic of Macedonia for European Union membership. The opinion recommends granting candidate status for EU membership;
- 17 December 2005** The Presidency of the European Council in Brussels granted candidate status to Macedonia for European Union membership
- February 2008** The Council adopted the Accession Partnership for Republic of Macedonia
- October 2009** The European Commission has recommended start of the accession negotiations for full-fledged membership of the Republic of Macedonia;
- 9 November 2010** The European Commission recommended start of the accession negotiations for full-fledged membership of the Republic of Macedonia;
- December 2010** The Council broadly shares the Commission's assessment of the country's sufficient fulfilment of the political criteria and notes that the Commission has reiterated its recommendation that accession negotiations should be opened with the Republic of Macedonia;
- 12 October 2011** The European Commission recommended start of the accession negotiations for full-fledged membership of the Republic of Macedonia;
- 10 October 2012** The European Commission recommended start of the accession negotiations for full-fledged membership of the Republic of Macedonia;

10. Annex II: Official census data in both countries according to ethnicity

	1981 Census		1991 Census		2001 Census		2011 Census	
	Number	%	Number	%	Number	%	Number	%
Republic of Croatia²⁶³	4,601,469	100.00	4,784,265	100.00	4,437,460	100.00	4,284,889	100.00
Croats	3,454,661	75.08	3,736,356	78.10	3,977,171	89.63	3,874,321	90.42
Albanians	6,006	0.13	12,032	0.25	15,082	0.34	17,513	0.41
Austrians	267	0.01	214	0.00	247	0.01	297	0.01
Bosniacs	20,755	0.47	31,479	0.73
Bulgarian	441	0.01	458	0.01	331	0.01	350	0.01
Montenegrins	9,818	0.21	9,724	0.20	4,926	0.11	4,517	0.11
Czechs	15,061	0.33	13,086	0.27	10,510	0.24	9,641	0.22
Hungarians	25,439	0.55	22,355	0.47	16,595	0.37	14,048	0.33
Macedonians	5,362	0.12	6,280	0.13	4,270	0.10	4,138	0.10
Germans	2,175	0.05	2,635	0.06	2,902	0.07	2,965	0.07
Poles	758	0.02	679	0.01	567	0.01	672	0.02

²⁶³ Data from Croatian Bureau of Statistics http://www.dzs.hr/default_e.htm

Roma	3,858	0.08	6,695	0.14	9,463	0.21	16,975	0.40
Romanians	609	0.01	810	0.02	475	0.01	435	0.01
Russians	758	0.02	706	0.01	906	0.02	1,279	0.03
Ruthenians	3,321	0.07	3,253	0.07	2,337	0.05	1,936	0.05
Slovaks	6,533	0.14	5,606	0.12	4,712	0.11	4,753	0.11
Slovenians	25,136	0.55	22,376	0.47	13,173	0.30	10,517	0.25
Serbs	531,502	11.55	581,663	12.16	201,631	4.54	186,633	4.36
Italians	11,661	0.25	21,303	0.45	19,636	0.44	17,807	0.42
Turks	279	0.01	320	0.01	300	0.01	367	0.01
Ukrainians	2,515	0.05	2,494	0.05	1,977	0.04	1,878	0.04
Vlachs	16	0.00	22	0.00	12	0.00	29	0.00
Jews	316	0.01	600	0.01	576	0.01	509	0.01
Others ²⁾	404,450	8.79	152,803	3.19	21,801	0.49	18,965	0.44
Regional affiliation	8,657	0.19	45,493	0.95	9,302	0.21	27,225	0.64
Not declared	17,133	0.37	73,376	1.53	79,828	1.80	26,763	0.62
Unknown	64,737	1.41	62,926	1.32	17,975	0.41	8,877	0.21

	1981 Census		1991 Census		1994 Census		2002 Census	
	Number	%	Number	%	Number	%	Number	%
Republic of Macedonia total ²⁶⁴	1,909,136	100 %	2,033,964	100 %	1,945,932	100%	2,022,547	100%
Macedonians	1,281,195	67.0	1,328,187	65.3	1,295,964	66.6	1,297,981	64.2
Albanians	377,726	19.8	441,987	21.7	441,104	22.7	509,083	25.2
Turks	86,691	4.5	77,080	3.8	78,019	4.0	77,959	3.9
Romani	43,223	2.3	52,103	2.6	43,707	2.2	53,879	2.7
Serbs	44,613	2.3	42,775	2.1	40,228	2.1	35,939	1.8
Muslims	39,555	2.1	31,356	1.5	15,418	0.8	2,553	0.1
Bosniaks					6,829	0.3	17,018	0.8
Montenegrins	3,940	0.2	3,225	0.1	2,318	0.1	2,003	0.1
Croats	3,349	0.2	2,878	0.1	2,248	0.1	2,686	0.1
Yugoslavs	14,240	0.7						
Vlachs	6,392	0.3	7,764	0.4	8,601	0.4	9,695	0.5
Bulgarians	1,984	0.1	1,370	0.1	1,682	0.1	1,417	0.1
Others or unspecified	6,228	0.3	45,239	2.2	9,814	0.5	14,887 ²	0.7

²⁶⁴ Data from the State Statistical Office of the Republic of Macedonia http://www.stat.gov.mk/Default_en.aspx

11. Annex III: List of negotiation chapters for EU accession pre and post-2005

Pre-2005	Post-2005
Chapter 1: Free Movement of Goods	Chapter 1: Free Movement of Goods
Chapter 2: Free Movement for Persons	Chapter 2: Freedom of movement of workers
Chapter 3: Freedom to Provide Services	Chapter 3: Right to establishment and freedom to Provide Services
Chapter 4: Free Movement of Capital	Chapter 4: Free Movement of Capital
Chapter 5: Company Law	Chapter 5: Public procurement
Chapter 6: Competition Policy	Chapter 6: Company Law
Chapter 7: Agriculture	Chapter 7: Intellectual property rights
Chapter 8: Fisheries	Chapter 8: Competition Policy
Chapter 9: Transport Policy	Chapter 9: Financial services
Chapter 10: Taxation	Chapter 10: Information society and media
Chapter 11: EMU	Chapter 11: Agriculture and rural development
Chapter 12: Statistics	Chapter 12: Food safety, veterinary. & phytosanitary policy
Chapter 13: Social	Chapter 13: Fisheries
Chapter 14: Energy	Chapter 14: Transport policy
Chapter 15: Industrial Policy	Chapter 15: Energy
Chapter 16: SMEs	Chapter 16: Taxation
Chapter 17: Science and Research	Chapter 17: Economic and monetary policy
Chapter 18: Education and Training	Chapter 18: Statistics
Chapter 19: Telecommunications	Chapter 19: Social policy and employment
Chapter 20: Culture and Audiovisual Policy	Chapter 20: Enterprise and industrial policy
Chapter 21: Regional Policy and Co-ordination	Chapter 21: Trans-European networks
Chapter 22: Environment	Chapter 22: Regional Policy and

	coordination of structural instruments
Chapter 23: Consumers and Health Protection	Chapter 23: Judiciary and Fundamental Rights
Chapter 24: Justice and Home Affairs	Chapter 24: Justice, freedom and security
Chapter 25: Customs Union	Chapter 25: Science and research
Chapter 26: External Relations	Chapter 26: Education and culture
Chapter 27: CFSP	Chapter 27: Environment
Chapter 28: Financial Control	Chapter 28: Consumer and health protection
Chapter 29: Finance and Budgetary Provisions	Chapter 29: Customs Union
Chapter 30: Institutions	Chapter 30: External relations
Chapter 31: Other	Chapter 31: Foreign, security and defence policy
	Chapter 32: Financial control
	Chapter 33: Financial and budgetary provisions
	Chapter 34: Institutions
	Chapter 35: Other issues

12. Annex IV: List of interviewees

1. Rosa Balfour, Senior analyst, European Policy Centre, Brussels
2. Per Ibold, Macedonia Desk, Directorate for Enlargement, European Commission
3. Nicholas Whyte, Senior Analyst, Independent Diplomat
4. Martin Dawson, Macedonia Desk, Directorate for Enlargement, European Commission
5. Svetlana Jovanovska, Brussels correspondent
6. Augustin Palokaj, Brussels correspondent
7. Alexandra Stiglmayer, European Stability Initiative, Brussels
8. Dzenk Sejfula, Mission of the Republic of Macedonia to the EU
9. Fabrice De Kerchove, King Boudain Foundation
10. Zoran Thaler, Member of the European Parliament
11. Martin Demirovski, Open Society Institute, Brussels
12. Gergana Noutcheva, Maastricht University Professor
13. Jelko Kacin, Member of the European Parliament
14. Axel Wallden, Directorate for Enlargement, European Commission
15. Dragan Tilev, Mission of the Republic of Macedonia to the EU
16. Jonas Jonnson, Council of the European Union
17. Nelija Vrzina, Embassy of the Republic of Croatia to the Netherlands
18. Allan Jones, Croatia Desk, Directorate for Enlargement, European Commission
19. Hannes Swoboda, Member of the European Parliament
20. Blerim Reka, former Ambassador of the Republic of Macedonia to the EU
21. Malinka Jordanova, Director, European Policy Institute, Skopje
22. Neda Korunovska, Open Society Institute, Skopje
23. Julijana Ilievska, Secretariat for European Affairs, Government of the Republic of Macedonia
24. Radmila Sekerinska, Member of Parliament of the Republic of Macedonia, President of the Committee for EU integration, former vice Prime Minister for EU affairs
25. Ivica Bocevski, former vice Prime Minister for EU affairs of the Republic of Macedonia
26. Suad Missini, Human rights activist, Civil Society Resource Centre, Macedonia
27. Silva Pesic, UN Human Rights Advisor, Macedonia

28. Vladimir Stojanovik, Officer, Agency of the communities representing less than 20% of the population, Macedonia
29. Vesna Babic, Director of the Agency of the communities representing less than 20% of the population, Macedonia
30. Hajrije Ahmed, Human Rights activist, Common Values CSO, Macedonia
31. Zagorka Tnokovska, Senior civil servant, Ministry of Justice, Head of the inter-institutional body for protection and advancement of human rights, Macedonia
32. Arno Van Der Pas, Political Affairs Officer, OSCE Macedonia
33. Elvis Ali, Delegation of the European Commission to Skopje, Macedonia
34. Ljupco Gjorgjinski, Head of UN Programme to Enhance Inter-Ethnic Dialogue and Collaboration, Macedonia
35. Ljubomir Frckovski, former Minister of internal affairs and foreign affairs, Macedonia
36. Dragi Celevski, Deputy Ombudsman of the Republic of Macedonia
37. Xhelal Cajani, Secretariat for the implementation of the Ohrid Framework Agreement, Government of the Republic of Macedonia
38. Mabera Kamberi, Head of Sector, Ministry of Labour and Social Policy, Macedonia
39. Svetlana Geleva, State Counsellor, Ministry of Foreign Affairs of Republic of Macedonia
40. Jagoda Novak, Senior Researcher, Human Rights Centre, Croatia
41. Antonija Petričušić, Researcher, Law Faculty, University of Zagreb, Croatia
42. Milorad Pupovac, Member of the parliament of Croatia, President of the Serbian National Council
43. Davor Gjenero, Human Rights expert, Zagreb
44. Stevo Pendarovski, University Professor and former Advisor to the Macedonian President
45. Dejan Palic, Deputy Ombudsman of the Republic of Croatia
46. Zoran Pusic, Human Rights Activist,
47. Mirjana Mikic, Human Rights Activist
48. Dejan Jovic, University Professor and advisor to the Croatian President
49. Branko Socanac, Head of the Office of national minorities in the Croatian government
50. Diana Zusmir, Officer, Office of national minorities in the Croatian government

51. Aleksa Djokic, Officer for EU funds, Office of national minorities in the Croatian government
52. Kristijan Turkalj, Head of Department, Ministry of Justice, Croatia and head of negotiating team for chapter 23: Judiciary and Fundamental Rights
53. Dragan Zelic, CSO activist, Zagreb
54. Srdjan Dvornik, Human rights Expert, Zagreb
55. Sandra Bencic, CSO activist, Human Rights House, Zagreb
56. Allesandro Fracasetti, Resident Representative, United Nations Development Programme, Zagreb, Croatia
57. Vjeran Pavlakovic, University Professor, Rijeka, Croatia
58. Vedran Horvat, Director, Heinrich Boll Stiftung, Zagreb, Croatia
59. Tin Gazivoda, Open Society Institute, Croatia
60. Aleksandar Tolnauer, President of the Council of National Minorities, Government of the Republic of Croatia
61. Zarko Puhovski, University Professor and former head of the Croatian Helsinki Committee
62. Marija Pejcinovic – Buric, Member of the Croatian Parliament and head of the Council for EU Accession
63. Viktor Koska, University Researcher, Faculty of Political Science
64. Ljubo Manojlovic, Executive Director, Serbian Democratic Forum
65. Jasmina Papa, Social Inclusion Officer, United Nations Development Programme, Zagreb, Croatia
66. Drago Zuparic, Researcher, Institute for Migration and Ethnic Studies
67. Slobodan Uzelac, Vice Prime Minister of the Republic of Croatia responsible for human rights and rights of minorities
68. Anonymous interviewee, Head of Department of National minorities, Ministry of the administration of the Republic of Croatia
69. Anonymous interviewee, Mission of the Republic of Croatia to the EU
70. Anonymous interviewees, Delegation of the European Commission to Zagreb, Croatia

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