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Journal of European Public Policy

Publication details, including instructions for authors and subscription information:

<http://www.informaworld.com/smpp/title~content=t713685697>

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To cite this Article Trauner, Florian(2009) 'From membership conditionality to policy conditionality: EU external governance in South Eastern Europe', Journal of European Public Policy, 16: 5, 774 – 790

To link to this Article: DOI: 10.1080/13501760902983564

URL: <http://dx.doi.org/10.1080/13501760902983564>

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From membership conditionality to policy conditionality: EU external governance in South Eastern Europe

Florian Trauner

ABSTRACT In view of the uncertainty about the final outcome of the current enlargement process, how effective is the EU's *acquis* conditionality in South Eastern Europe? By elaborating on the example of justice and home affairs, the article argues that the EU's external leverage has remained strong, as the EU has developed additional ways to render its conditionality approach credible. Although the hurdles for entering the EU have been raised, Croatia's compliance efforts can be considered to be similar to the logic observed in the eastern enlargement. 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. The EU managed to compensate for less credible membership rewards by substantially increasing the value of the policy reward of visa-free travel. This strategy was effective but has created tensions with regard to the EU's broader objectives in the region.

KEY WORDS Conditionality; enlargement; external governance; justice and home affairs; South Eastern Europe.

INTRODUCTION

This analysis is concerned with the extent to which and the ways in which the European Union's (EU's) pre-accession strategy has shaped domestic policy-making in the non-member states of South Eastern Europe. The countries which the EU subsumed under the term 'the Western Balkans' are among the latest candidates aspiring to join the EU.¹ After the end of the Kosovo conflict in 1999, the EU offered the prospect of becoming members once the relevant political and economic conditions were met. However, a certain enlargement fatigue, the controversy on the candidacy of Turkey and several other factors contributed to the fact that it is unclear when, or even whether, these countries will actually make it into the EU. At the same time, the stabilization of the Western Balkan region is of great interest to the EU, not only in terms of post-conflict stabilization and rehabilitation, but also with regard to soft security issues such as illegal immigration and organized crime. The EU attaches a high degree of importance to this subject, as reflected by the fact that justice and home affairs is one of the most prominent areas of co-operation.

Since the EU was particularly interested in ensuring a strong lever in this policy domain, EU–Western Balkan co-operation in justice and home affairs will be the main focus of this analysis. The EU has developed a common understanding that EU rule-extension in justice and home affairs beyond its own territorial scope is a chief means to enhance efficiency and problem-solving capacities within the EU. Hence, the EU has developed an external dimension of justice and home affairs (see Bigo 2001; Monar 2004; Lavenex 2006; Mitsilegas 2007; Rees 2008; Wolff *et al.* 2009). This has concerned not only the Western Balkans, but has been equally true for the ‘wider Europe’ initiative (Lavenex 2004) and for almost all of the EU’s relations with third countries (Trauner 2006).

However, the setting of the Western Balkans is unique in some respects. Following the 1995 Dayton Peace accords, the countries emanating from the former Yugoslavia had to demarcate the roughly 5,000 kilometres of newly created borders among themselves. Those borders were frequently ill-demarcated, poorly protected and characterized by a lack of regional structures and networks to tackle common cross-border problems. The EU therefore placed a particularly strong emphasis on reshaping the weak institutional arrangements on border policing and on the sealing of the porous borders between those states. The underlying (EU) assumption was that if the EU made the Western Balkans strengthen their border control and law enforcement capacities (thus adhering to the justice and home affairs *acquis* while coming closer to the EU), these states would be increasingly capable of coping with the problems of illegal migration and organized crime themselves.

But can we expect these states to accept the EU’s influence and to adhere to its rules? The EU has refrained from specifying dates or timeframes for membership to any of the Western Balkan states. Also, it is known from past experience in the eastern enlargement that third countries cannot be expected to implement the *acquis communautaire* unless the Union provides clear and tangible incentives to do so. Thus, the question remains: Will the EU nonetheless manage to transfer its rules and institutions to the Western Balkans? If the answer is yes, what then are the factors that affect the countries’ choice for rule adoption?

By tracing the EU’s influence in two Western Balkan countries, this article shows that the EU’s pre-accession strategy in the Western Balkans draws from experiences gained in the eastern enlargement. However, the key challenge for the EU has been to render the conditionality approach credible. Since the rewards associated with EU membership were less tangible, the credibility of EU requests and rewards could be questioned. In the domain of justice and home affairs, the EU found a way to compensate for less credible membership conditionality by developing an additional form of external leverage: policy conditionality. In defining the liberalization of the visa regime as a gradual process to be achieved through the signing of a European Community (EC) readmission agreement and reforming domestic justice and home affairs, the EU managed to counterbalance the possible weaknesses of the pre-accession strategy and divert the candidate countries’ calculations of the non-adaptation costs. In theoretical terms, the study therefore supports a rational incentives model

of EU external governance (Schimmelfennig and Sedelmeier 2004: 663f.), yet suggests a stronger focus on material rewards that do not relate to EU accession. In proposing policy-related incentives in addition to the coveted prospect of membership, the EU managed to fill its conditionality approach with more substance and to establish a more tangible relationship between demand and reward.

The analysis proceeds in three steps: first, the theory of EU external governance is presented and adjusted to the specific conditions of the Western Balkans. Second, the paper introduces the concrete strategies and instruments with which the EU has tried to encourage these states to deepen their reform efforts in the area of justice and home affairs. Out of the broad justice and home affairs *acquis*, the analysis focuses on border management and preparations for the implementation of the Schengen *acquis*. This constitutes a central area of co-operation and an important prerequisite for the eventual integration of the Western Balkan countries into the EU. Finally, the domestic responses with regard to the EU's demands are illustrated with two case studies.

The empirical analysis is based on data collected using qualitative methods (35 semi-structured expert interviews conducted in Brussels, Zagreb, Skopje and Vienna, document analysis and press coverage) and concerns two case studies with a rather different accession horizon: on the one hand, Croatia, which is the furthest advanced in terms of EU integration, and, on the other hand, Macedonia, which is further behind and therefore more likely to have doubts regarding EU accession. Hence, it is interesting to compare the two cases, examining the similarities but also the differences in the underlying dynamics of EU external governance in the Western Balkans.

EU EXTERNAL GOVERNANCE IN SOUTH EASTERN EUROPE

In the context of the eastern enlargement, an extensive body of new research has emerged on how, and to what extent, the EU may impact the political structures and processes of a state seeking accession to the EU (see, among others, Goetz 2001; Kelley 2004; Schimmelfennig and Sedelmeier 2005b; Vachudova 2005; Pridham 2005; Grabbe 2006; Sedelmeier 2006). Scholars have conceived different models of EU external governance to theorize under what conditions EU rule transfer to applicant states is most effective. Arguably, the most refined theoretical approach to this question was presented by Frank Schimmelfennig and Ulrich Sedelmeier (2004). They explain successful rule adoption according to three different modes of external governance. The first approach explains successful rule adoption owing to rational cost–benefit calculations. According to the external incentives model, the EU applies a bargaining strategy of reinforcement by reward, through which it provides external incentives for a target government to comply with its conditions. The better the cost–benefit balance between EU rewards and domestic adaptation costs, the more likely EU rule transfer is to succeed. The most prominent alternative explanation to the external incentives model is derived from constructivist thinking. According to the

social learning model, the different actors are motivated by internalized identities, values and norms; faced with different courses of action, actors choose the most appropriate or legitimate one. Therefore, domestic actors adopt EU rules if they are persuaded of their appropriateness. As a possible third alternative model, scholars present the lesson-drawing model, according to which a non-member state may adopt EU rules without EU incentives but owing to domestic dissatisfaction with the status quo (Schimmelfennig and Sedelmeier 2004: 664–8).

Theoretically informed research suggests that the external incentives model of governance has the strongest explanatory power in terms of interpreting successful adaptation and transfer of given EU rules (Schimmelfennig and Sedelmeier 2005a: 210–21; Grabbe 2003; Vachudova 2005). **The key conditions for successful rule transfer in the eastern enlargement were that the EU set its rules as conditions for membership and the countries obtained a credible membership perspective (Schimmelfennig and Sedelmeier 2005a: 215).** Based on these findings, the EU's leverage on the current candidate countries can be expected to decrease since the incentive structure has changed for the worse. The prospect of EU membership for the Western Balkans is rather vague, and offers an unclear accession horizon which 'seemingly reflects the lack of EU clear commitment to incorporate the region and leaves the whole process [open] to the dynamics within the Balkans and the EU itself' (Elbasani 2008: 18). The climate for further EU enlargement has turned out to be less favourable. Since the 2004 'big bang' enlargement, discussions on the EU's 'integration capacity' and efforts to bring the reform of the current treaty framework to an end have dominated the agenda in Brussels. According to the Commission's enlargement strategy (2006b: 15), a 'new institutional settlement should have been reached by the time the next member is likely to be ready to join the Union'. Therefore, the failed European Constitution and Ireland's rejection of the Reform Treaty have increased **the level of uncertainty for the Western Balkans as to whether they are indeed among the EU's next member states. Against this background, the question remains: Has the altered enlargement context impacted on the candidate countries' calculations of non-adaptation costs and reduced the EU's capacities to transfer its rules to South Eastern Europe?**

The evidence presented in this paper does not confirm the assumption that the altered enlargement context has automatically resulted in less EU influence. It empirically proves that Croatia and Macedonia showed strong compliance efforts in justice and home affairs. Although the hurdles for entering the EU have been raised, the logic behind Croatia's compliance efforts can be considered similar to the logic observed in the eastern enlargement. The key to understanding the compliance of Macedonia, whose membership prospects are less certain or even questionable, is to take into account **policy conditionality in addition to membership conditionality. The EU ensured a strong leverage to shape domestic policy-making in the country by substantially increasing the value of the 'intermediary reward' (Vachudova 2005: 251) of visa-free travel.**

The issue of facilitated travel opportunities is of high political salience in those Western Balkan countries located on the EU's negative visa list (Serbia, Montenegro, Bosnia and Herzegovina, Macedonia and Albania). The EU took advantage of the issue by inventing 'negotiations on visa liberalization', meaning that, in exchange for the fulfilment of a whole range of conditionality requirements, from signing an EC readmission agreement and improving border controls to reforming public administration and fighting organized crime, the EU talked with the target Balkan countries about visa-free travel. The use of visa liberalization as an incentive is not new. It has already led to strenuous efforts in Bulgaria and Romania to implement the Schengen rules (see Grabbe 2005). The EU's approach in the Western Balkans was different, however. Here, the EU introduced the concept of a graduated approach towards the lifting of the visa requirements and linked an unusually broad range of conditionality requirements to the reward. The promise of visa-free travel turned into a moving target used by the EU to encourage compliance with an increasing list of conditions. In a situation where membership rewards were less tangible, owing to the uncertainties of the accession process, the key variable for successful *acquis* adoption became policy conditionality. This finding is of relevance when considering that the EU can rely less and less on the rewards associated with closer institutional affiliation towards an eventual EU membership. Beyond the membership incentive, a more relaxed visa regime in exchange for signing readmission agreements, tightening border controls, aligning the domestic visa policies, etc., may become a prime means of EU external governance in justice and home affairs.

THE EUROPEANIZATION STRATEGIES FOR THE WESTERN BALKANS

What exactly are the routes of influence through which the EU tries to bring the Western Balkan states closer to EU standards in justice and home affairs? This section presents the two major strategic frameworks within which the EU seeks to shape domestic policy-making in the Western Balkans: the EU's pre-accession strategy referred to as the Stabilization and Association Process and the Ohrid Border Process, an attempt by different international organizations to improve border security and management in South Eastern Europe.

The EU's pre-accession framework for the Western Balkans

In the aftermath of the 1999 Kosovo war, the EU launched the Stabilization and Association Process (SAP) and gave Croatia, Albania, Serbia and Montenegro, Bosnia and Herzegovina, and Macedonia the prospect of future membership. The Kosovo crisis had shown the EU that the Regional Approach of 1997, which bypassed the issue of membership, was insufficient to achieve the primary goals as defined, i.e. the restoration of peace and stability and the development of good neighbourly relations in the region. Therefore, the EU opened

up the possibility of membership and granted the Western Balkan countries the status of 'potential candidates for EU membership' (European Council 2000: point 67). The SAP is based on the understanding that each Western Balkan state can enter the EU on its own merit, yet European rapprochement has to go 'hand in hand' with fostering regional reconciliation and co-operation (see Zagreb Summit 2000). Respective progress depends on the fulfilment of several conditions, most notably on co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY) and on a sufficient degree of compliance with general and country-specific conditions. At the centre of the pre-accession strategy is the negotiation and implementation of Stabilization and Association Agreements (SAAs) which provide a formal contractual relationship with the Union over the transitional period considered necessary to adopt core EU standards and rules (see Pippan 2004: 233–8).

Co-operation in justice and home affairs matters has always constituted a priority for the EU, reflected in the fact that the policy field, together with economic development, were the most important areas of the EU's pre-accession assistance. The Commission's justice and home affairs strategy set four priorities. The first was the fight against organized crime, with a particular focus on fighting all forms of trafficking, especially of human beings, drugs and arms, as well as the smuggling of goods. Equal priority was given to the strengthening of public order and the police. The reform of the judicial system was the strategy's second key objective, bearing in mind that the states' court systems were frequently overwhelmed by an immense backlog of cases, which led to corruption, public mistrust of the system and unacceptable delays. Third, the Western Balkan states were expected to reorganize their external border control systems in line with the EU's integrated border management concept for the region. Finally, the priorities were complemented by the title 'migration and asylum' in which the strengthening or, in certain cases, the creation of responsible state institutions and the alignment with European and international standards dominated the agenda (Commission of the European Communities 2001).

The upgrading and the reform of border management in the Western Balkans were considered particularly important. When illegal migration from the region, measured through border apprehensions, saw a sharp rise in the year 2000, the EU started to view border security in the Balkans as a direct concern (see detailed Hills 2004). Owing to its self-interest in coping with the issue, the EU placed a strong, for some even a disproportionate, focus on the creation of efficient border security systems in South Eastern Europe (see Hänggi and Tanner 2005: 51). Proper and modern border control was regarded as the key to effectively tackling human and drug smuggling, human trafficking as well as the smuggling of cars and weapons. Furthermore, a functioning border control was seen as a prerequisite for 'the increase of tourism, for the facilitation of the exchange of persons, services and goods to foster economic growth, and for a well-functioning customs control, bringing stable incomes to state budgets' (Stability Pact for South Eastern Europe 2001: 3). The EU expected the Western Balkan states to reorganize their external border control systems in line with the EU's

integrated border management (IBM) concept. Besides border control, it also encompassed trade facilitation and border region co-operation and should serve as the major means of tackling the interrelated problems of porous borders and cross-border problems. The overall aim was to facilitate legitimate cross-border activities such as tourism, trade and trans-border co-operation and, at the same time, to close the borders to criminal activities ('open but controlled and secure borders') (see IBM Guidelines 2004).

After the strategy was defined, the EU actively encouraged the countries in the Western Balkans to take up the EU's border management model. In doing so, it relied not only on its immediate pre-accession framework but also on a joint effort by different international organizations to tackle border vulnerability in the Balkans.

The Ohrid Border Process

In May 2003, representatives of the North Atlantic Treaty Organization (NATO), the Organization for Security and Co-operation in Europe (OSCE), the EU and the Stability Pact met with specialists from the Western Balkan countries to address the sensitive issue of border security and management. Named after the place where the conference took place, the Ohrid Border Process pursued the objective of bringing together the activities of four international actors and of committing the Western Balkans to developing and implementing an integrated border security approach, on the basis of the EU border model. The whole process was based on the implementation of concrete measures outlined in the two founding documents, the Common Platform and the Way Forward Document, both of which were signed at the founding conference.

The Common Platform document served as a memorandum of understanding between the four partner organizations. It outlined that the Ohrid Border Process is the attempt to guide international organizations, which usually do not work together, in the joint project of modernizing the border security regime in the Balkans. The four organizations were assigned different tasks: NATO, as the principal organization, was to strengthen border control and prohibit smuggling in the crisis areas where NATO forces were dispatched; the EU was to support developing integrated border management systems in each country within the context of the SAP; the OSCE, as a 'civilian actor', was to have a main focus on training and know-how transfer; and the Stability Pact was to enhance the regional aspect of co-operation and offer a common platform for the activities of the four partner organizations (see Common Platform 2003).

The Way Forward Document, in turn, defined how to reform the Western Balkans' external border control sector. The countries were expected to adhere to pre-defined country-specific objectives. These varied according to the domestic conditions but basically referred to three major tasks: the demilitarization of borders and the handing over of border control to a civilian chain

of command; the development and implementation of integrated border management strategies and corresponding action plans; and the development of cross-border co-operation. Concerning the time schedule, the document declared that 2006 would represent the end of the transitional period during which the countries were to implement the short- and medium-term commitments (Way Forward Document 2003: 2).

In consideration of this time schedule, the question remains: How have the Western Balkan countries responded to the EU's demands? Did they implement the EU's reform agenda for their domestic border control system and, if so, what were the decisive factors for the countries' choice of rule adoption?

THE RECEIVING END – GOVERNANCE MODE AND EFFECTIVENESS

This section sheds light on the receiving end of the EU's engagement and establishes to what extent, and under what conditions, the Western Balkan states have adjusted to EU politics in justice and home affairs. The EU's governance mode and effectiveness is investigated in the case studies of Croatia and Macedonia. The analysis of the candidate countries' response begins with Croatia, the regional frontrunner in terms of EU integration.

The case of Croatia

Croatia signed an SAA with the EU in October 2001 and presented its application for membership on 21 February 2003. Although the European Council granted Croatia candidate status in June 2004, the country could not open accession negotiations owing to insufficient co-operation with the ICTY. Croatia had to wait until October 2005 to finally start accession talks on membership of the EU. One month later, the Commission launched the process of screening Croatian laws and regulations, which was completed on 18 October 2006. Croatia could then start the accession negotiations; the country hoped to be ready to join the EU by 2009 or 2010.

The EU's strategies in justice and home affairs made Croatia adjust to the EU and strengthen its external border control policies. With the support of the twinning project 'Integrated Border Management: Border Police', implemented with Slovenian and German twinning partners between 2002 and 2004, the Croatian government redrafted relevant legislation (in particular, the Border Protection Act adopted in October 2004) and changed its administrative structure and hierarchy. In addition, Croatia promoted regionally co-ordinated management of its borders and developed a strategic approach with regard to the domestic implementation of the respective *acquis* (a Schengen Action Plan was approved in February 2007). The most problematic issue concerned Croatia's failure to achieve a major breakthrough in solving outstanding border disputes with Bosnia and Herzegovina, Serbia, Montenegro and Slovenia. Croatia's official approach, according to a former Croatian Minister for European Integration,

was that ‘we engage in all our efforts not to allow any open [border] issue to jeopardize the good relations with our neighbours’ (interview 31, 11 May 2006, Zagreb).² Another sensitive issue referred to the EU’s demand to foster the free movement of people from within the region in order to advance regional integration. So, even though Croatia introduced several new visa requirements for countries from outside the region, it was expected to lift its entry restrictions for its immediate neighbours, in particular for Serbia. In that case, the EU considered regional integration as outweighing full compliance with the negative and positive visa list in Council Regulation No. 539/2001, at least until a late stage in Croatia’s EU accession process. The Croatian government lifted the visa requirements for Serbia on 4 June 2003, three weeks before the EU–Western Balkans summit in Thessaloniki. The Croatian Democratic Union (HDZ), the then main opposition party, strongly opposed this step on the grounds that the ‘resulting “flood” of the Serbs moving freely through Croatia would “offend” those Croats who fought in the early 1990s’ (quoted in Radonjic 2003: 2). In order to counter the criticism, the government launched a media campaign highlighting the fact that the decision was required to advance the EU integration process and would also bring economic benefits, in particular in the tourism sector (Radonjic 2003: 2).

A major result of Croatia’s adjustment was that the country had to assume a greater responsibility for preventing illegal transit migration on the way to the EU. According to figures from the Croatian Ministry of the Interior (2006), the number of illegal crossings at the state border has increased constantly in recent years. In comparison to 2004, an overall increase of 18 per cent was observed in 2005.³ Since the eastern enlargement took place, Croatia has become one of the EU’s strategically important border countries. The country is located at the northern end of the Balkan route known for the smuggling of arms, illicit drugs and human beings. Croatia’s transformation into a buffer zone to prevent irregular migration flows into the EU has also been influenced by Slovenia and Hungary introducing a Schengen border towards the country. As a result, more and more people were caught while trying to cross the Croatian–EU border illegally. Once caught, they were returned to Croatia. In view of EU accession, the country had signed a whole network of readmission agreements and strengthened the capacities of institutions dealing with illegal immigration.⁴

In the case of Croatia’s choice for rule adoption, the prospect of eventual EU membership proved to be the most powerful incentive. Contrary to the eastern enlargement ‘where preparations for accession in the areas of justice and home affairs started relatively late’ (Monar 2001: 6), the EU committed Croatian authorities to introducing reforms in the Ministry of the Interior by incorporating the EU’s justice and home affairs policies early on and putting them in a prominent place in the country’s rapprochement process with the Union. The conditionality principle was provided by the Title on Justice and Home Affairs (Chapter VII) in the SAA which demanded that Croatia gradually align its policies with the EU’s *acquis* on border control, visa policy, migration and

asylum. As part of the conditionality principles linked to eventual EU integration, Croatian actors agreed to introduce reforms in the sensitive policy domain of justice and home affairs. In general, the binding commitment of the SAA to bring domestic legislation closer to EU standards was highly effective in Croatia's case. By the end of 2004, several months before the country officially started its accession negotiations, the Croatian parliament had already adopted around 500 new laws in order to adjust to the EU, meaning that nearly half of Croatian legalization was harmonized with that of the Community (Kušić 2005: 439).

However, the value added by the Ohrid Border Process was openly questioned by the responsible border police directorate within the Ministry of the Interior. Croatian border officials advanced the view that the process did not present a useful instrument to approach the EU's integrated border management model more quickly. Rather, they argued, it was a required extra task on the country's direct road towards EU accession.

To start, one thing has to be clarified: the idea of the origin of the Ohrid Border Process was to improve border security on the triangle Kosovo/Macedonia/Albania. The second main idea was to shift responsibility from the army to the police. With these two ideas in mind, it was finally decided to spread it out and other countries like Croatia became involved. And here is the problem in general: there are several international processes with overlapping agendas and duplications.

(interview 25, 8 May 2006, Zagreb)

Therefore, the decisive EU leverage for triggering reform efforts was the direct conditionality principle linked to EU accession. These, however, have been significantly hardened for Croatia as well as for all other candidate countries currently queuing for membership. This can be most noticeably observed through the introduction of the benchmarking mechanisms that added a rigorous element to the accession process.⁵ According to Vladimir Drobñjak, Croatia's chief negotiator in the country's accession talks with the EU, the benchmarking system will dictate the tempo of accession to the EU (quoted in the House of Lords 2006: 5). Croatian officials advanced a similar view in several interviews. As noted by a Croatian politician:

We are under more scrutiny by the EU and the Commission when it comes to the implementation of the procedures. Actually, there was a bitter experience in the last enlargement round, especially in Bulgaria and Romania: implementation was the last issue they considered in the monitoring of the membership criteria. And this is one of the lessons learnt by the Commission: that implementation is actually the most important one. Therefore, after the fifth enlargement round and with Croatia being the first country of the current enlargement process, we see that the Union insists much more on implementation performance than it used to do before.

(interview 31, 11 May 2006, Zagreb)

Overall, Croatia's process of rule adoption can be compared to the experiences of the Central and Eastern European countries in the context of the eastern enlargement. The strategies of the EU to invoke changes domestically seem to work effectively and, according to the Commission President José Manuel Barroso, Croatia has already made good progress in the accession negotiations (Barroso 2008). The two greatest differences from earlier enlargement rounds are that the accession conditions have been made more difficult and this time it is not only a matter of Croatia's performance that will decide whether or not the country actually becomes a member state of the Union. After the Irish rejection of the Lisbon Treaty, France, Germany and Luxembourg declared that the treaty's entering into force will be a precondition for any further enlargement, including Croatia's EU accession (see Agence Europe 2008).

The case of Macedonia

The second case study analysed in this paper is Macedonia – a country with a medium-term membership perspective, but where reforms in the Ministry of the Interior and border policing were considered crucial after the near civil war of 2001. The armed conflict between members of the National Liberation Army, predominantly Albanian citizens from Macedonia, and Macedonian security forces constituted a major setback for the country. Even though in April 2001 the country had already signed an SAA, it took Macedonia until March 2004 to apply officially for membership. In December 2005, the European Council finally granted Macedonia candidate status but refrained from naming a possible date for the beginning of accession negotiations (European Council 2005).

The empirical findings suggest that Macedonia was highly ambitious to approximate to EU standards in justice and home affairs. Despite the rather remote prospect of membership, the country set priorities for speedily developing a functioning border control service and improving its capabilities to fight illegal migration and human trafficking. In certain issue areas, the country's adjustment efforts were even ahead of the EU's demands. For instance, even before the issue of readmission agreements could be raised at the first meeting of the EU–Macedonian Stabilization and Association Council, the Macedonian government had installed an inter-ministerial working group for intensifying and accelerating the process of concluding such agreements. As a result, a large number of readmission agreements were signed in a comparatively short time period (eight agreements were signed in the first six months of 2006 alone) (see MARRI 2006). Macedonia was also the first in the region to complete the process of border demilitarization by transferring responsibility for guarding its borders from the Ministry of Defence to the Ministry of the Interior. The process of creating non-military border guarding structures involved the establishment of new institutions such as the Department of Border Police, the redrafting of relevant legislation and the training of a considerable number

of border-crossing guards.⁶ At a regional level, Macedonia signed several bilateral agreements and protocols on enhancing border management co-operation and data-sharing with neighbouring states (Government of the Republic of Macedonia 2006). In terms of regional co-operation, however, a pending dispute on the exact drawing of the border between Macedonia and Kosovo could not be resolved. Yet, the Macedonian government was not necessarily to blame for this failure, which was more a consequence of the general insecurity surrounding Kosovo's final status.

In general, Macedonia's process of adjusting to the EU was characterized by the country's constant efforts to convince the European partners that it was capable of effectively guarding its external borders. Instead of a country of origin or transit of unwanted migration flows, Macedonia hoped to be regarded as a partner country in the EU's broader efforts to control irregular migration flows in Europe. For that reason, Macedonia was keen to demonstrate its readiness to come closer to EU rules in justice and home affairs as soon as possible. In the process of aligning with the visa *acquis*, for example, Macedonia introduced particularly strict visa requirements for third countries such as Moldova, which is considered as a potential source country for women trafficking (Baldwin-Edwards 2006: 7).

Macedonia's process of rule adoption was also guided by an interest in receiving EU rewards, although the rewards were not the same as those in the Croatian case. Even if the prospect of joining the EU gave Macedonian politicians a strong motivation to pursue reform policies, membership conditionality was not the sole stimulus for EU rule adoption. Macedonia's urge to rule alignment was not driven by the fear of being detached from EU integration, but by the urgent desire to be rid of the visa requirements for Macedonian citizens. Like all other Western Balkan states (with the exception of Croatia), Macedonia is placed on the EU's list of countries whose nationals require a visa to enter the EU (see Council of the European Union 2001). In Macedonia, the issue of visa liberalization has ranked high on the political agenda, no matter which parties have held power. Realizing that its visa regime could constitute an effective 'carrot', the EU linked an improved visa regime to the fulfilment of a whole series of conditions. According to a European Commission official:

every Macedonian government will gain most [in the view of their electorate] if they achieve improvements concerning the Schengen visa regime . . . Now EU member states say that they have to comply with certain standards concerning illegal migration, etc., before they qualify for visa liberalization. This is a tremendous incentive to speed up things.

(interview 3, 6 February 2006, Brussels)

The strategy proved highly efficient in terms of making Macedonian actors strengthen their reform efforts domestically. The prospect of a more relaxed visa regime was frequently named as the strongest single incentive to speed

up reform efforts in domestic justice and home affairs (interview 6, 8 February 2006, Brussels; interview 12, 27 April 2006, Skopje).

Even though Macedonia hoped for a quick visa liberalization scheme, the country was allowed to move towards a visa-free regime only gradually. In exchange for 'substantial efforts by the countries in question' (Commission of the European Communities 2006a: 9), the EU offered negotiations on an EC visa facilitation and readmission agreement aimed at facilitating travel for certain categories of the population as well as reducing handling fees for all citizens. Along with the other Western Balkan states, Macedonia signed the agreement in September 2007. As a next step, the European Commission opened dialogues on the abolition of visa requirements and submitted a roadmap to each of the Western Balkan countries defining the tailor-made conditions to be met. The dialogues are based on the premise that if the target countries meet their relevant conditions and benchmarks they will gradually advance towards visa liberalization.

Owing to the political salience of the issue, the policy reward of visa liberalization provided the EU with a particularly strong lever. The Macedonian government felt the pressure for reform not only from the EU but also from within the country. Several non-governmental organizations (NGOs) and student organizations initiated a campaign for eliminating the visa requirements and demanded that their government speed up its efforts to achieve visa-free travel as soon as possible.⁷ Against this background, the Macedonian authorities considered the Ohrid Border Process to be a useful additional project providing them with clear ideas on how and when they should reform their external border control system (interview 20, 4 May 2006, Skopje).

CONCLUSIONS

The aim of this paper was to assess the EU's external governance approach toward the non-member states of South Eastern Europe. In the case studies of Croatia and Macedonia, the analysis illustrated how the EU shaped the political processes and structures in domestic justice and home affairs.

In this analysis, the EU's pre-accession strategy was considered a major framework for exerting influence on the Western Balkan states. Furthermore, in its efforts to bring the states closer to EU standards in border control and management, the EU also relied on the Ohrid Border Process, which was a joint effort of different international organizations to improve border security and management in the Balkans. The paper argued that the EU's strategies for initiating reforms in domestic justice and home affairs were successful in both cases. Yet, concrete incentives for rule adoption differed in the two case studies under investigation. In Croatia, the crucial incentives proved to be the prospect of eventual EU membership and the conditionality principles linked to EU accession. The EU encouraged rule adoption in justice and home affairs by including the respective rules early on, and by emphasizing their link to the country's rapprochement with the Union. On the contrary, the

value added by the Ohrid Border Process was openly questioned because the initiative would be counterproductive in terms of losing time and energy. The case study on Macedonia also revealed that the EU could successfully transfer its justice and home agenda to the Western Balkans, although evoked by a different incentives structure. Even if membership conditionality played an important role in motivating Macedonian actors to initiate reform policies, the country's urge to quickly come closer to the EU justice and home affairs *acquis* was overwhelmingly guided by interest in achieving the reward of a liberalized visa regime. The EU declared that visa-free travel should not be attained directly, but only in a graduated approach and in exchange for the fulfilment of several policy-related conditions, most notably the signing of an EC readmission agreement. This strategy proved to be very powerful. According to the data used in the present analysis, Macedonian authorities, by and large, referred to the prospect of a more relaxed visa regime as the strongest single incentive to speed up reform efforts in domestic justice and home affairs.

In conclusion, the key to understanding sectoral integration in justice and home affairs is to take into account policy-related conditionality in addition to membership conditionality. This strategy was effective in terms of inciting EU rule adoption, yet has created several problems and various side-effects. For many Balkan citizens, the combined costs of the visa fee, travel insurance, translation and recognition of documents have presented an insurmountable barrier to travel into the EU (ICG 2005: 8–10). In Serbia, 70 per cent of all students have never left their country; thus they have a very vague idea of what the EU is like. The feeling of being in a 'Balkan ghetto', to which the EU applies a 'consular sadism', has created a sense of humiliation and of a pariah status in Europe (ICG 2005). The result has been popular frustration with the EU's policies, which have undermined broader stabilization efforts in the region. A Macedonian official in the country's mission to the EU shed light on this dilemma:

According to the annual reports, Macedonia made significant progress from 2002 on and this will continue. But they are always saying 'we need to see more'. Some member states are very reluctant to dismantle their borders . . . So there are people who are wondering, why are we doing so much and why are we making such painful progress . . . – if they don't want us anyway?
(interview 6, 8 February 2006, Brussels).

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ACKNOWLEDGEMENTS

I am grateful for helpful comments on earlier drafts provided by Gerda Falkner, Oliver Treib, Sylvia Kritzinger, Andreas Wimmel, Paul Luif, Zoe Lefkofridi, Juan Casado Asensio, Bernhard Zeilinger, the two anonymous JEPP referees, the participants of the LSE Fonet Workshop on the 'Justice and Home Affairs External Dimension' in London, 21 September 2007, and of the EU Consent Workshop 'Deepening in an Enlarged Europe: Integrative Balancing in the New Member States' in Budapest, 16–17 November 2007.

NOTES

- 1 Under this term, the EU subsumes Croatia, Bosnia and Herzegovina, Albania, Macedonia, Montenegro, Serbia and Kosovo.
- 2 The EU was not satisfied with this approach but expressed unambiguously that Croatia's performance in solving outstanding border issues would be an important component of the Union's overall assessment concerning Croatia's involvement in regional co-operation (see Commission of the European Communities 2005: 33).
- 3 According to figures from the Croatian Ministry of the Interior (2006), the number of illegal migrants of Albanian ethnicity entering Croatia increased by 300 per cent in 2003. Most illegal crossings were attempted at the border to Serbia, with numbers showing a significant increase of plus 105 per cent between 2004 and 2005.
- 4 By the end of 2007, Croatia had signed readmission agreements with 24 countries, including Western and Eastern European and other SAP states.
- 5 The use of benchmarks became relevant when Croatia was allowed to begin concrete accession talks. Following the Commission's recommendation, when EU member states decide whether or not to open a chapter of the *acquis* for negotiations, they may include benchmarks to be met by Croatia before the specific negotiations start.
- 6 The most important new law in this respect was the Law on Control of the State Border adopted in May 2006. Other efforts to bring the Macedonian border control system closer to European standards included the creation of a national integrated border management strategy and the establishment of a National Border Management Co-ordination Centre with a focus on strengthening the co-operation of the agencies involved in border management.
- 7 The campaign was called 'Visa, forget about it'. For more details, see: <http://www.aegee-skopje.org.mk/>

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