

---

AICEI PROCEEDINGS

---

## The Lisbon Treaty and its Potential Normative Impact on the Stabilization and Association Process

Malinka Jordanova

### Abstract

*The Lisbon Treaty establishes a unified normative structure, codifying the values and goals of the EU and the means for their promotion. While falling short of the ambitions of the Treaty on the Constitution from a normative viewpoint, the Lisbon Treaty has introduced a more consolidated normative structure, including an institutional framework for the global projection of its normative power. EU normative principles have been particularly important in the EU's eastern enlargement and have been "exported" to candidate countries through the conditionality policy based on the Copenhagen criteria. When it comes to the Western Balkans, these criteria have been embedded in the stabilization and association process (SAP). However, the SAP entails a stronger and stricter conditionality framework, which has been the basis for tougher normative pressure from the EU on the Western Balkans countries. This influence has been particularly strong in terms of political criteria, even including conditions beyond the scope of mirroring the EU's own normative framework. This paper explores how and to what extent the EU "exports" its fundamental normative principles to the Western Balkans through the main mechanisms of the SAP. We compare the norms promoted within the SAP to the EU normative principles instituted in the Lisbon Treaty. Exploring the prevailing patterns of norm diffusion and acceptance by candidate countries leads to a deeper understanding of the key challenges and issues of the integration process. Furthermore, we consider the potential of the EU normative structure, strengthened by the Lisbon Treaty, to promote policy change in a sustainable process of Europeanization of the Western Balkans.*

**Keywords:** Lisbon Treaty, Western Balkans, Copenhagen criteria, Europe, normative principles.

The “normative turn” in European studies has resulted in an extensive volume of contributions to the theory of European integration. The predominant focus of normative approaches over the last two decades has been on the internal issues of the EU, primarily on issues related to legitimacy (Bellamy and Castiglione, 2003). In recent years, however, the external projection of the normative structure of the EU has provoked interest both from academics and practitioners. The normative discourse of the role of the EU as a global actor has instigated substantial—and frequently confrontational—discussions. The concept of “normative power Europe” suggests that “not only is the EU constructed on a normative basis, but importantly that this predisposes it to act in a normative way in world politics” (Manners, 2002, 252), which in turn, has been heavily criticized from the realist-structuralist position (Hyde-Pryce, 2006).

Recent articles on the integration of the Western Balkan countries in the EU range from strong criticism as to the normative legitimacy of EU action in the SAP, stating that “the EU’s policy towards the Western Balkans lacks a strong normative justification” (Noutcheva, 2009, 1065), or that “conditionality is not working as well as expected” (Pridham, 2008, 75), to findings that the EU has pursued a consistent policy of political conditionality but that its effectiveness has been weakened “by the legacy of ethnic conflict that bedevils most remaining eligible non-member countries and increases the domestic political costs of compliance with EU political conditionality” (Schimmelfenning, 2008, 933).

In an attempt to avoid a sharp differentiation between a norm-driven and an interest-driven process, we explore the viability of the concept suggesting that “norms affect the process of institutional change not only by providing legitimacy to some forms of political action, but by shaping the actor’s perceptions of their interests, as well as their strategies” (Dimitrakopoulos: 2005, p. 676) in the case of the diffusion and acceptance of norms in the SAP. Schimmelfenning and Thomas found that “EU Member States often reach agreements that take into account the values and commitments they have already articulated together” (2008, 13). While these concepts have so far been explored on the side of the norm-setter (EU), they have not been explored from the point of view of the norm-taker (in our case, SAP countries). The dichotomy of values and interests is present on both sides: on the side of the norm-maker as well as the norm-taker. However, we cannot presume that

interests and values are always and inherently conflicting and static. Norms should rely both on interests and values in order to be legitimate and viable.

Starting from this framework, we first present the normative structure of the SAP, reviewing its development with a focus on the cases most contested from the normative point of view. We proceed with an examination of the mechanisms evolved for norm diffusion and norm acceptance, applying Checkel's concept of norm-maker and norm-taker (Checkel, 1998). Then we explore the changes of the Lisbon Treaty most relevant for normative intervention at the level of instituting the legal norms of the Treaties and how they correlate with the norms exported to the SAP, including the institutional setup through which these norms are diffused.

Lastly, we examine the potential of the changes instituted by the Treaty to exert an impact on the normative structure of the SAP and induce a process of convergence of norms and interests both on the side of norm-makers and norm-takers through a process of norm diffusion and norm acceptance.

### **The SAP: Goals, Values, Norms and Conditions The Normative Foundation**

The normative foundation of the SAP was laid down in the Regional Approach established by the EU in 1996-1997 for the states of the newly created "Western Balkans" group with two pillars a) promoting basic democratic principles, including the rights of minorities, and promoting a market economy, and b) regional cooperation.<sup>1</sup> In essence, these two pillars of the normative framework have remained the core of the normative structure of the process. Although "regional cooperation" has been treated in a different context and document as a goal, instrument, value or norm, it remains the normative core of the SAP, expressing the specific context of transition and Europeanization in efforts to heal the difficult legacy of dissolution and conflict. Later, this normative framework was modified and broadened. References to the general international and regional normative framework were added, as was the case with the Stability Pact.<sup>1</sup> The Thessaloniki agenda of 2003, "Moving towards European integration", more explicitly connects the values of the SAP with the values declared in the treaties, proclaiming "that the EU will work closely with the Western Balkan countries to further consolidate peace and promote stability, democracy, rule of law, and respect for human and minority rights" and, consequently adds to

---

the two normative pillars that the “Inviolability of international borders, peaceful resolution of conflicts and regional cooperation are principles of the highest importance.”<sup>1</sup> These normative foundations were also incorporated in the stabilization and association agreements (SAAs), thus gaining legal force (as a constitutive element of the agreements and as a basis for their cancellation in case of non-compliance).<sup>1</sup> Since 2003, which was a significant year for the SAP, there have been no major novelties in the normative structure of the process. The strategy paper of the European Commission “Enlargement Strategy and Main Challenges 2006–2007”, which proclaims the principles of “consolidation of commitments, conditionality and communication”, does not refer to the normative aspects of the process.

Having analyzed the Council and Commission documents related to the SAP from the viewpoint of their normative foundations and the structure of the SAP (Table 1), we found that these documents rarely differentiate between goals, interests, values and norms. It can be summarized that the stability and prosperity of the region have been identified as the goals of the SAP, while interests have rarely been mentioned, at least in official documents. However, the security of the continent has largely been recognized as being a common interest for the EU and for the region.

### **Conditionality**

The policy developed to achieve these goals on the basis of the proclaimed values, is that of strict conditionality, again with two pillars, or two sets of conditions: the first connected to the general norms (later to the Copenhagen criteria), and the second to individual conditions for each state. The latter is largely associated with the second pillar of the values: regional co-operation, originally related to the implementation of the peace agreements following the conflicts. Later on, these conditions dealt with the consequences of the conflict—refugees, borders, and minorities—evolving into the so-called “statehood issues” or “first-order regime-problems” (Pridham, 2008) and became decisive for the future dynamics of the process. A system of monitoring was installed by the Commission with regular compliance reports. Unfortunately, in the 1990s all these documents remained far from the public eye.

As the other end of the conditionality policy is the “reward” arm. This developed very slowly and cautiously. Until 1999, developing bilateral

---

relations, financial assistance and economic co-operation were offered as a reward for compliance. In 1999, the potential reward was expanded with SAAs, cooperation in justice and home affairs, and the development of political dialogue. Analysis of the normative structure of the SAP, as it developed in the period 1997–2003 (Table 1), clearly shows that until 2003 the rewards for compliance were practically identical with the instruments of the process. In addition, they were rather technical and unappealing phrases for what the offer actually meant. What was really at stake was inclusion as a reward instead of exclusion as a punishment. Furthermore, a sense of exclusion was a widespread sentiment in the region, adding to the discomfort of the legacies of wars and economic and social downturn. Such a situation was quite contrary to that of the CEE countries which went from exclusion to inclusion based on the normative justification for their “return to Europe” (Fierke, Wiener, 1999).

Until the year 2000, the regional approach resulted in non-compliance (Croatia, Yugoslavia, Bosnia and Herzegovina) or in weak progress (Albania). As for Macedonia, it was given a reward as a front-runner in the form of a new “carrot”, the SAA, which was justified by the EU on the basis of the country’s record in regional cooperation and “mature democracy”.<sup>1</sup> Finally, a limited state of compliance and convergence in policies and goals was achieved after changes in power in Croatia and Serbia following concerted efforts by the “international community” and the domestic actors (political elites, civil society) in a combination of “hard” and “soft” measures. The key element of the “soft” measures was the gradual opening of the prospect of EU membership following the Stability Pact of 1999 and the Feira European Council Conclusions of January 2001 when SAP countries were declared as “potential candidates for membership”.

Consequently, when the SAP was re-created as an enlargement process in 2003 at the Thessaloniki agenda, the substance of the process changed by opening EU membership prospects, although undefined in terms of time. Such a change required a change in the conditionality policy and its instruments. The conditionality policy was based on the Copenhagen criteria and the specific SAP criteria. The instruments of the process acquired a completely different shape, with a number of mechanisms inherent to an enlargement process added: political dialogue and cooperation on CFSP; European Partnerships/regular reports; Parliamentary Cooperation through joint committees; increased financial assistance through the programme for

---

Community assistance for reconstruction, development and stabilization (CARDS) and the announcement of a new instrument in the form of technical assistance for enlargement (TAIEX, Twinning); regular economic dialogue; strengthened co-operation in justice and home affairs; regional integration in energy and trade; and cooperation in environment, etc. (Table 2). Finally, the process became more transparent and the citizens of the region were able to comprehend the messages sent by the EU, albeit through a political and cultural prism.

From this review of the process, we might easily conclude that the process developed in a logical way, consistent with its normative structure. This would not be correct, however. What, then, is wrong? In reality, what happened was a lost decade of transition in the Western Balkans, in which the EU normative structure and the implementation of its conditionality policy were not of utmost relevance because important political decisions were made outside of this framework. The export of EU norms to the Balkans started long before the inauguration of the SAP. The first effort was the EU's failed intervention in the dissolution of ex-Yugoslavia at the beginning of the 1990s when the EU, on the basis of its inherent democratic values, insisted on a peaceful solution to the crisis. The disrespect of the recommendations of the Badinter Commission, charged by the EU with drawing up criteria for the recognition of independent states from ex-Yugoslavia (Rich, 1993), presented a substantive normative collapse of EU policy with significant impact on the normative consistency and credibility of the EU in the region. The coercion employed by the international community with the NATO intervention in Yugoslavia was much more relevant to the actual state of affairs than the EU measures. The delicate connection of political conditionality with geo-political factors is also highly relevant (Pridham, 2008). Pridham states that that Romania and Bulgaria in 1999 "benefited from the good will of key influential member states because of their assistance to NATO forces during the Kosovo war" (2008, 78). A parallel could be drawn with allowing Macedonia to negotiate a SAA the same year, although the impact from the Kosovo war on Macedonia was much greater and the "reward" much lower. Neither could it compensate for the five-year quest for international recognition, because of the blockade on the name issue, without any normative justification, by Greece, with which the EU showed political solidarity.<sup>1</sup>

The statement that the conditions under the Copenhagen criteria are the same as in the last wave of enlargement is misleading. They are not. They

---

are different. Formally they fall within the Copenhagen criteria, but the specific conditions related to the legacy of the dissolution of Yugoslavia, with a problematic normative basis, remain embedded and still present a strong impediment in the process. The lack of results of the conditionality policy and non-compliance with the individual conditions set in 1997 led to changes in individual conditions as the situation on the ground changed. Thus the statehood conditions evolved in the meantime and were also incorporated in the political criteria, some of them becoming formally part of the constitutional order of the countries concerned.

Many of the “first-rate conditions” feature prominently as “key priorities” of the Accession Partnership.<sup>1</sup> Cooperation with the ICTY has been a permanent priority for Bosnia and Herzegovina, Croatia, Serbia and Montenegro, and additionally Kosovo, as well as the issues of refugee return and reconciliation amongst the citizens of the region. Resolving state borders are first-rate issues for Croatia, Serbia, Bosnia and Herzegovina and Montenegro. For Bosnia and Herzegovina, ensuring state entity coordination and the implementation of police reforms is vital. For Serbia, implementation of the Constitutional Charter was set as a priority under the criterion on democracy and the rule of law, then changed to “revise the constitutions of the Republics in line with European standards” until the successful referendum for the independence of Montenegro—with the odd 55% threshold set by the EU—resulted in disintegration which was finally simply recognized as a fact. Concerning the Kosovo issue, the priority for Serbia evolved from allowing “large autonomy for Kosovo” in 1997 to the obligation to demonstrate “full respect for the UNSCR 1244” and to “intensify dialogue with Pristina, encourage the participation of Kosovo Serbs in the provisional institutions of self-government”, “show a constructive approach with regard to Kosovo” or “cooperate constructively on matters relating to Kosovo”. For Macedonia, the conditions with most impact on the process and the domestic political scene were the Ohrid Framework Agreement and its implementation,<sup>1</sup> as well as the condition to “ensure regional cooperation” and pursue “good neighbourly relations, in particular through intensified efforts to find a negotiated and mutually acceptable solution on the name issue with Greece, in the framework of UN Security Council Resolutions 817/93 and 845/93” (included in the 2006 Accession Partnership). Minority issues are an issue throughout the whole region. Apart from problems connected with refugees, which are normatively justifiable on the basis of the internationally accepted

---

human rights framework, and to some extent the issues of borders, which present a pre-condition for state recognition, most other conditions are highly contested in terms of their normative foundations.

### **Distracted Focus**

The conditions posed by the EU, especially those that are specific for the SAP, have a strong impact on the domestic scene, even on the outcome of elections—a clear example being the parliamentary elections held in Serbia in 2006 when the EU granted the SAA immediately before the elections. In a situation in which there is no clear prospect of accession (except for Croatia), in which there is no clear normative justification presented before the electorate, and in which high political costs are entailed, compliance either fails or is faked (Noutcheva, 2009). In such a context, domestic political elites tend to focus on upcoming elections rather than on taking the risk of reform, (which is questionable in terms of political gain), or revert to nationalism (or both, since elections revive ethnic divisions).

The resonance of the EU plea for “brave political decisions” and for “consensus on EU issues” grows weaker and weaker. Given that all political issues at stake are EU issues (or can be declared EU issues or areas of EU intervention), the room for legitimate domestic political competition in a pluralist society is seen by political elites as being quite narrow. The values and interests of the domestic political scene constitute a complicated setting, with a broad spectrum of parties, ethnic complexities, and high (and unmet) expectations on the part of the citizens. In addition, accumulated feelings of injustice and exclusion, as well as lack of trust in domestic institutions, deteriorate the milieu for norm acceptance.

An even more difficult aspect of statehood issues is that they are divisive in the domestic political setting and further aggravate the weak state of democracy and institutional capacity, impeding the process of state building as EU member-state building in the sense of the proposals put forward in the 2005 Report of the International Commission on the Balkans (Amato Commission).

Ironically, focusing on the remaining statehood and ethnicity issues in the Balkans could undermine the credibility of conditionality policy. As they occupy the political energy both of the EU and the political elites in the Western Balkans, they have the potential to overshadow compliance with



---

norms that have a firm normative basis and are essential for the Europeanization of the Balkans. The general democratic conditions are those on which there should be no compromise if a true process of Europeanization is to be vigorously pursued. In the effort to provide an impetus for a turning-point decision, there is a tendency to neglect the implementation of norms entailed in the political criteria for EU accession. When a decision of “first rank” is to be encouraged, a willingness to “tick off the boxes” in a rather formal manner can be observed. Those working on EU integration in the region have for some time described this situation as “EU acting conditionality and SAP countries acting compliance” in order to keep the “spirit living” and demonstrate “progress”. Today we here more “that the loss of trust in the process on both sides should be an issue of concern”. (Kühne, 2010)

Another highly contested issue is how a condition becomes a precondition or a benchmark for access to the next stage in the integration process. Each successive applicant has faced more difficult conditions, which means that the candidate has less incentive to make a difficult decision incurring high domestic political costs, since the next stage of the process is not sufficiently rewarding. This results in failure to deliver on the “key condition”.

Apart from statehood issues, not much resistance at the level of acceptance of norms can be observed, but the absence of “carrots” strongly influences the dynamics and impetus of the process. The general climate for reform deteriorates and the EU accession oriented reforms become hostage to a “divisive issue”. Certainly, the institutional and administrative capacities which are crucial in the Europeanization process (not only in the accession process) are weakened through partisan and ethnic divisions which, in turn, have a strong impact on delivery.

By contrast, the attractiveness of the rewards and the low political costs incurred in adopting the visa liberalization reform can explain the commitment to fulfilling the benchmarks for the process. In this case, the reform required by the EU could be presented—and was presented—as a necessary domestic reform process and one that was favorable for the citizens.

In conclusion, after 2003, the SAP evidently lacks conceptual and strategic development based on normative grounds. Instead, it seems that the process is now captured in its own mechanisms and impediments lacking normative foundations, which creates obstacles for further progress. The situation requires urgent action, but the overall climate both in the EU and in the region is not favorable for such action.

---

### **“Norm-Makers” and “Norm-Takers” in the SAP**

A purely formal view of the normative framework for the SAP and the instruments applied might lead us to the conclusion that they are reasonably comparable to those of the enlargement process for the CEE. It is a fact that in shaping the SAP, the European Union has relied on its experience with the CEE countries and the mechanisms of the enlargement process already developed. The SAAs are largely tailored after the Europe agreements, the European/accession partnerships—in line with the Accession partnerships, the Pre-Accession Instrument (IPA)—and with the pre-accession financial instruments of the CEE enlargement process (PHARE, ISPA, SAPARD). However, the political substance of the process has changed significantly. The very title of the process is more explicit in terms of its substance and focus than the instruments used and the formal norms.

Two crucial differences have significantly altered the very essence of the enlargement process in its re-creation as a stabilization and association process: the shifted political focus and the implementation of the newly installed mechanisms of foreign security policy. At the same time, the Balkans was the test case for the evolving instruments of the Second and Third pillars of the EU. Different models have been tested: military and police missions; conflict-prevention missions (Macedonia, Bosnia and Herzegovina, Kosovo); a High Representative (Bosnia and Herzegovina); merging the head of Delegation with the Special Representative (Macedonia); co-operation between the EU and NATO, including other international organizations. The newly appointed EU High Commissioner, Catherine Ashton, in her speech before the European Parliament characterizing the Balkans as the birthplace of the EU Common Foreign and Security Policy, stated that “More than anywhere else, it is where we cannot afford to fail”.<sup>1</sup>

Inspired by the model developed by Manners (2002), we make an attempt to present a review of the mechanisms for norm diffusion in the SAP. The model classifies the channels of diffusion as: contagion, meaning unintentional diffusion by the EU; informational, meaning strategic and declaratory communications by the EU; procedural, meaning institutionalization of the relationship with the EU; transference, meaning an exchange of benefits between the EU and third parties; overt, meaning the physical presence in third states and organizations; and cultural filter, meaning cultural diffusion and political learning in third states and

---

organizations (Manners 2002, 13). We have intentionally not classified the mechanisms in the presented table identically with the model, since our aim here is to illustrate the complexity of the process and the multiplicity of actors involved, especially in the light of the possible impacts of the Lisbon Treaty that are aimed at increasing the coherence of external policies.

Without intending to be exhaustive, this review of the instruments and mechanisms is illustrative of its complexity and the challenge it presents for the norm-takers, aggravating the state of their (already questionable) institutional capacity and the state of ownership of the reform process in general. We also take into account the fact that each of these instruments includes a multilateral aspect (the involvement of other global and regional organizations), and a bilateral aspect (the involvement of EU member states as well as other state actors). The influence of the media should also not be neglected.

In the norm absorption process, the “norm-takers” develop their own national strategy for norm acceptance—a process which, in principle, includes:<sup>1</sup>

a) *Establishing a national strategy for accession*, based on maximum possible consensus among political parties;

b) Ensuring *convergence of priorities*, thus implying convergence of the reform: identifying national priorities and how they converge with EU norms, prioritizing goals, translating them into strategic documents and plans (the National Programme for Adoption of the *acquis*, the Pre-Accession Economic Programme, diverse annual programmes and sectoral strategies), including impact assessment of norm-compliance (political, economic, social);

c) *Communication* - understood not simply as a communication strategy document but as a learning and dialogue process leading to genuine comprehension of the normative basis, interests and goals—both on the side of the EU and in the domestic context. (This mechanism includes the involvement of stakeholders and the wider civil society, including the media.);

d) *Ensuring credibility* as a reformer and trusted partner of the EU, winning support on this basis;

e) Ensuring “*one voice*” externally, a strategy for the communication of norms, goals and interests, resulting in substantial dialogue with EU and other external actors. (Here we also note that it is not only the strategy of “one voice” that is important, but the manner of presenting positions, which must be aligned with what is considered to be “acceptable” and “expected” in the

---

EU (which has not proven to be an easy endeavor), and is an important part of the learning process.);

f) *Monitoring compliance and delivery of commitments*: installing systems of compliance is not merely a technical issue connected with administrative capacity but a matter of genuine political will and prioritization;

g) A sustainable process of *building administrative capacity*.

(NB: This attempt to identify the main mechanisms of norm absorption is by no means exhaustive.)

All of the countries concerned have been engaged in rather dynamic and comprehensive prioritization, planning and programming for the “EU integration process” resulting in a superfluous number of general and sectoral strategies, programs, action plans, laws, etc., including the setting up of numerous new institutions (not all of them required under the *acquis communautaire*, and many of them “unique” in their own merit). The extent to which these processes contribute to a genuine Europeanization process or merely constitute a technical “exercise” of its own kind, largely driven or supported by external actors, is open to question. In the whole process it is also highly questionable whether the actors involved are aware of the normative foundations of the undertaking and its implications for the domestic actors and the requirements entailed for norm adaptation. A counter-argument from a utilitarian viewpoint could be “they do not need to be aware, they just have to do it”, which in our opinion is not sustainable in the long term, due to a lack of ownership which would result in lack of implementation. The norm-taker would simply remain a norm-taker.

### **Changes in the Treaties Relevant to the SAP Normative Structure**

The Lisbon Treaty consolidated and broadened the normative basis of the European Union and its activity. A more comprehensive definition of the values of the Union now explicitly mentions the rights of persons belonging to minorities and adds pluralism, non-discrimination, tolerance, justice, and solidarity and equality between women and men as attributes of society in which the Member States share common values (Treaty on European Union – TEU, Art. 2.).

---

Most of the changes of the Lisbon Treaty connected to its normative structure have already been integrated in the SAP through the Copenhagen criteria. Nonetheless, it would be advisable in the (much needed) strategy for the future process of enlargement to align the normative basis of the SAP with the normative basis of the EU.

The most important normative intervention in the Lisbon Treaty, giving it constitutional substance, is the reference to the Charter of Fundamental Rights, providing the Charter with legal force equal to that of the Treaty, in spite of the reservations in the protocols added to the act in order to ensure its political passage.<sup>1</sup> Additionally, the obligation to accede to the European Convention of Human Rights strengthens the human rights framework of the Union. It has already been assessed that the reference to the Charter as a binding instrument, the reference to the European Convention on Human Rights, and the reference to the general principles of law as established by the ECJ “together will change the face of the Union” (Pernice, 2008, 252).

Human rights have been gradually and progressively embedded in the SAP's political conditionality. However, the fact that human rights as an important part of the political criteria are now also legally grounded provides a strict legal basis (not a normative justification) for intervention in this area, especially taking into account the fact that the level of implementation is diverse across the countries and across different areas of human rights. It should be noted that the Amsterdam Treaty (Art. 49 TEU, now amended and providing reference to Article 2 defining the values of the Union) had provided a reference to the European Convention on Human Rights, implicitly embedding political criteria in accession conditions.

The “legalization” of the human rights area and the possibility for judicial review may provide a strong impetus for (the much needed) promotion of the implementation of human rights in SAP countries if appropriately communicated to the stakeholders. Also of relevance is the fact that the SAP countries are parties to the European Convention on Human Rights and, as such, are participants of the regional supranational judicial system of human rights.

Without going into greater detail, we turn our attention to the subtle difference in the definition of the rights of minorities as one of the divisive issues in the SAP (as it also was in the CEE enlargement). While the TEU proclaims as a value “human rights, including the rights of persons of minorities” based on the concept of individual human rights, the divisive

---

issues on the rights of minorities in the SAP involved the quest for the collective rights of minorities, which resulted in a substantial re-design of the constitutional order of the states concerned.

The Treaty provides that the Union's action on the international scene (Article 21) "shall be guided by the principles which have inspired its own creation and which it seeks to advance in the wider world,"<sup>1</sup> thus explicitly promoting the normative consistency and legitimacy of the Union as a global actor. This approach should not be underestimated, and cannot be treated as a purely declarative provision since its invocation would give normative force to the arguments presented.

One of the key changes introduced by the Lisbon Treaty is aimed at ensuring the coherence of the Union's external policies efficiently and in a consistent way (Dougan: 2008). The main normative impact on the SAP is expected from the institutional novelties of the Treaty: the (formalized) institution of the European Council, its newly established office of European Council President and the office of High Representative. The Office of the High Representative is crucial for ensuring the coherence of the Union's external action, and this was precisely one of the problematic areas in the normative intervention of the EU in the Balkans: incoherence of policies, superfluous and not always consistent instruments, different voices instead of one EU "voice", lack of consistency in the alignment of financial assistance with the declared priorities, etc. Given the new role of the High Commissioner and the responsibility to ensure coherence in policies, and given that the Balkans has been the test case, it seems that it is time to test the new competences on the test case.

According to the Treaty, the European Council, "shall provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof", while "it shall not exercise legislative functions" (Art. 15 TEU), "shall identify the strategic interest and objectives of the Union in the field of external relations" (Art. 22 TEU) and "the strategic guidelines for action within the area of Freedom, Security and Justice" (Art. 26 TEU). Thus defined, the position of the Council and its President have the potential to provide a strong impetus and strategic guidance in the enlargement process, comparable to that which was provided in the last round of enlargement (even without the formal provision, but with the political will). The President of the Council could become a "formidable new fulcrum of power – less in a formal sense" (Dougan: 2008, p. 628). Consequently, it is

---

not the formal position of the Council and its President but rather the political substance and personality of the office-holder that would fuel the SAP and channel the process of enlargement, which definitely needs impetus from the highest political level of the Union.

In our opinion, the improved role of the European Parliament will be favorable for the enlargement process as the European Parliament has favored enlargement and has maintained a constant focus on the SAP. In addition, the improved role of the European Parliament, coupled with a strengthened relationship and dialogue with the parliamentarians of the region, adds another perspective, and even language, to the process—one that is closer to the people. The example of the visa liberalization process, in which the European Parliament had a prominent role and evident influence, clearly shows that this institution has more to say and do on norms. It also has more to say on compliance, as harsh and open criticism of non-compliance on a normative basis may be more beneficial to a genuine Europeanization process of the Balkans than technical and carefully phrased messages.

The amended provision of the Treaty on the European Union on accession (Art. 49), besides the abovementioned reference to the values of the Union, provides for notification of the national parliaments and the European Parliament of an application, which is in line with efforts to ensure transparency and legitimacy. In our opinion, another provision is disputable: the attempt to include the Copenhagen criteria in the legal framework for accession. The result has been a vague general provision: “The conditions of eligibility agreed upon by the European Council shall be taken into account,” which presents a risk for the normative justification of eligibility for accession in view of possible vetoes by member states and the imposition of conditions without a normative basis on candidate countries in order to externalize their interests. Regardless of the fact that accession is conditional upon unanimous decision and that vetoes are possible, normative leeway in the provision for membership eligibility is not justifiable.

The tendency of member states to externalize their interests is already evident in the veto imposed by Greece on the Republic of Macedonia opening negotiations (although there was no formal vote, and the issue was not voted, since there was no agreement on the conclusions), insisting on a change in the constitutional name of the country. This involves other highly sensitive issues concerning Macedonian national identity (language, nationality, and

---

the range of use of the name). Another provision of the Treaty, the provision on the political solidarity of member states, has been invoked by EU officials as an explanation for the name issue, presented not as a normative justification but in terms of *realpolitik*.<sup>1</sup> The case of the stalling of Croatia's negotiations due to unresolved border issues with Slovenia is different in terms of its normative basis, since these were conditions that had been established for the international recognition of the states of ex-Yugoslavia as early as 1992. Nonetheless, it has already become evident that without political intervention which is normatively consistent, this tendency might not only continue but could intensify.

The unified normative structure of the Treaty and the simplified legal instrumentarium should—as long as these novelties are communicated in a suitable and timely manner—have a positive impact on norm acceptance, as being connected to the clarity and transparency of the normative structure and the legal order. Finally, the EU being instituted as a legal personality, apart from its political and legal meaning, also has a practical function in overcoming all the formal obstacles that the EU has faced in the establishment of different forms of representation under the second pillar in the SAP countries.

### **Conclusion**

The normative foundations of the Stabilization and Association Process converge to a large extent with the normative structure of the TEU introduced by the Lisbon Treaty, but with a strong focus on regionalism. However, it would be advisable in the (much needed) strategy for the future process of enlargement to align the normative basis of the SAP with the normative basis of the EU.

It is not the normative foundations but the way they have been translated into concrete conditions that raises serious doubts as to the normative justifiability of some of the individual conditions under the SAP conditionality, especially with regard to complex statehood issues.

What the Lisbon Treaty is expected to achieve in the first place is the creation of a political milieu for enlargement so that candidate countries (and their political elites) face a realistic prospect for accession. A “take it or leave it” approach might not work, because of the costs entailed by the decisions and the high political and wider social/national costs implied. Such an



---

approach would lead to lack of dialogue and lack of trust, which would only result in serious consequences later on when the states concerned eventually join the EU. The rewards should be re-examined in terms of access to the next stage of the process for the most costly political decisions. The process would be much more difficult, but much more sustainable. Further slicing the “carrot” makes no sense.

In terms of the proposed approach, based on the contributions by Dimitrakopoulos (2005) and Schimmelfenning and Thomas (2008), the EU and the SAP countries need to return to basics—to recognize each other’s values and interests and engage in a process of legitimizing policies and strategies.

The two most pressing issues of the SAP seem to be: a) an absence of political will and vision, and b) a lack of correspondence of the policies with the normative structure of the SAP, which is valid for both sides. The Lisbon Treaty does not provide an instant answer, but it does provide the tools insofar as the new positions of the Council President and High Representative may act while the Treaty provides the legitimacy of normative action.

The EU institutional rearrangement provides an opportunity to re-examine and streamline the policies applied in the SAP, eliminating actions that have no normative justification and avoiding superfluous and sometimes formal procedures that disguise the true Europeanizing nature of the process and its normative basis.

If the EU cannot afford to fail, the Western Balkans certainly cannot afford to do so.

---

## Endnotes

<sup>1</sup> As presented in the EU Council conclusions on the principle of conditionality governing the development of the European Union's relations with certain countries of South-East Europe (Bulletin EU 4-1997), the goals were: "to consolidate peace and stability in the region and to contribute to its economic renewal" in a "framework which promotes democracy, the rule of law, higher standards of human and minority rights, transformation towards market economies and greater cooperation between those countries."

<sup>2</sup> The Stability Pact for South East Europe (Cologne, June 1999) refers to "the principles and norms enshrined in the UN Charter, the Helsinki Final Act, the Charter of Paris, the 1990 Copenhagen Document and other OSCE documents, and, as applicable, to the full implementation of relevant UN Security Council Resolutions, the relevant conventions of the Council of Europe and the General Framework Agreement for Peace in Bosnia and Herzegovina, with a view to promoting good neighbourly relations."

<sup>3</sup> The Thessaloniki Declaration of Heads of States and Governments of June 2003 identifies the values as "democracy, the rule of law, respect for human and minority rights, solidarity and a market economy". It is interesting that "solidarity" is added in the Declaration but is not present in the compatible EU document, the Council Conclusions. In addition, "extremism, terrorism and violence, be it ethnically, politically or criminally motivated" were condemned, thus mirroring the specific legacy of the process.

<sup>4</sup> As stated in Article 3 of the SAA between the Republic of Macedonia and the EU, the normative grounds of the Agreement are as follows: on the one side, respect for democratic principles and human rights (referenced to the international and regional framework), respect for international legal principles and the rule of law, as well as the principles of market economy; on the other side, regional cooperation ("International and regional peace and stability, the development of good neighbourly relations are central to the Stabilization and Association Process").

<sup>5</sup> As stated in the Commission Compliance Report in 1999.

<sup>6</sup> In the Lisbon declaration of 1992.

<sup>7</sup> The European Accession Partnership in the form of a Council decision is an EU instrument identifying the priorities of the integration SAP as a basis for monitoring compliance and for guidance of EU assistance. The first set of documents was issued in 2004, the second in 2006 and the third in 2008.

---

<sup>8</sup> The positive avis on Macedonia's application was mainly due to the political will and capacity to implement the Ohrid Framework Agreement, which largely improves the rights specifically of the Albanian minority.

<sup>9</sup> Speech delivered on 10 March 2010.

<sup>10</sup> The list is based on my own practical experience and experience shared with relevant officials from the SAP countries, as well as analysis of the documents on the EU integration of the SAP countries.

<sup>11</sup> For the UK, Poland and the Czech Republic.

<sup>1</sup> Article 21 identifies the values in slightly different wording from Article 2, in addition to referencing the UN Charter and international law: "democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law".

<sup>13</sup> Article 24 TEU: "2. within the framework of the principles and objectives of its external action, the Union shall conduct, define and implement a common foreign and security policy, based on the development of mutual solidarity among Member States, the identification of questions of general interest and the achievement of an ever-increasing degree of convergence of Member States' actions."

## References

- Bellamy, R. and Castiglione, D. (2003). Legitimising the Euro-'Polity' and its 'Regime', *The Normative Turn in EU Studies*, *European Journal of Political Theory*, Vol. 2, No. 1, 7–34.
- Checkel, G. (1998). Norms, Institutions and National Identity in Contemporary Europe, *ARENA Working Papers*, WP 98/16.
- Dimitrakopoulos, G. Dionyssi (2005). Norms, Interests and Institutional Change, *Political Studies* Vol 53, 676–693.
- Dougan, M. (2008). The Treaty of Lisbon 2007: Winning Minds, not Hearts, *Common Market Law Review* 45, 617–702
- Fierke, K.M. and Wiener, A. (1999). Constructing institutional interests: EU and NATO enlargement, *Journal of European Public Policy* 6:5 December 1999:721–42
- Hyde-Price, A. (2006). Normative power Europe: a realist critique, *Journal of European Public Policy*, 13: 2, 217–234.

- 
- Kühne, B. (2010). Are the EU and the Balkans drifting apart? *Perspectives, Friedrich Ebert Stiftung*, February 2010.
- Manners, I. (2002). Normative power Europe: a contradiction in terms? *Journal of Common Market Studies* 40(2): 235–58.
- Manners, I. (2008). The normative ethics of the European Union, *International Affairs*, 84:1: 65–80.
- Noutcheva, G. (2009). Fake, Partial and imposed compliance: the limits of the EU normative power in the Western Balkans, *Journal of European Public Policy*, 16:7, 1065–1084.
- Pernice, I. (2008). The Treaty of Lisbon and Fundamental Rights, in: Stefan Griller/Jacques Ziller (eds.) *The Lisbon Treaty. EU constitutionalism without a Constitutional Treaty?* Springer, Wien and New York.
- Pridham, G. (2008). Democratizing the Western Balkans: Challenges and Burdens for the European Union, *International Issues & Slovak Foreign Policy Affairs* issue 03/2008: 72–89, on [www.cceol.com](http://www.cceol.com).
- Rich, R. (1993). Recognition of States, The Collapse of Yugoslavia and the Soviet Union, *European Journal of International Law* 36–65.
- Schimmelfenning, F. and Thomas, D. (2008). Normative Institutionalism and EU Foreign Policy in Comparative Perspective, *Working Paper, Dublin, DEI Working Paper*, USD Dublin European Institute, 8–12.
- Schimmelfenning, F. (2008). EU Political Accession Conditionality after 2004, *European Journal of Public Policy*, 15:6, 918–937.