

Minority Protection in the Western Balkans under the Weight of EU Conditionality: Pre-accession Monitoring as a Mechanism of Furthering or Compromising Compliance?

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ABSTRACT

The debate on conditionality as a principle of enlargement has heralded pre-accession monitoring as a key mechanism of compliance with EU standards. Nevertheless, the academic camp has not provided an in-depth insight into how monitoring contributes to the failure or success of enlargement and how it should proceed. Facing the next enlargement round to the Western Balkans, this thesis investigates in detail how progress made by the Western Balkan candidate countries is monitored in the area of minority protection. Combining conventional QCA and semi-structured interviews, the thesis tests the hypothesis that monitoring in the field of minority protection is not directly tied to accession as the final outcome of the pre-accession process. Comparing the European Commission's approach to monitoring in the field of minority protection in Croatia and Macedonia, the thesis demonstrates that in the absence of a clear monitoring framework, monitoring activities on the part of the EU are largely brought into play on an *ad hoc* basis, making accession a product of political compromise. Three crucial drawbacks are identified. Firstly, there is a profound lack of clarity of minority protection standards to which the candidate countries need to adhere. Secondly, inferior quality of both analysis and interpretation of indicator findings based on a random choice of issues, poorly justified conclusions, and vague recommendations is detected. Thirdly, and most strikingly, there is a stark unequal treatment of the candidate countries over time, casting doubt on the overall application of both conditionality and monitoring during the pre-accession process.

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LIST OF ABBREVIATIONS

CEE	Central Eastern Europe
CoE	Council of Europe
ECRML	European Charter for Regional or Minority Languages
EU	European Union
FCNM	Framework Convention for the Protection of National Minorities
M&E	Monitoring and Evaluation
OECD	Organization for Economic Cooperation and Development
OFA	Ohrid Framework Agreement
OSCE	Organization for Security and Cooperation in Europe
QCA	Qualitative Content Analysis
SAP	Stabilization and Association Process
SIOFA	Secretariat for the Implementation of the Ohrid Framework Agreement
UNDP	United Nations Development Program
UNICEF	United Nations International Children's Emergency Fund

INTRODUCTION

After a decade of successive conflicts polarized along ethnic lines by a Gordian knot of political interests, the membership prospects that the European Union (EU) gave the countries in the Western Balkans greatly contributed to keeping politics calm in the region. In light of the Yugoslav wars, the EU heralded minority protection as a prerequisite for its own enlargement. The imminent demands of the enlargement process have induced the EU to articulate more clearly its aspiration of forging democratic values and eventually adopt a set of political criteria for membership, including ‘respect for and protection of minorities,’ at the 1993 Copenhagen European Council.

Ever since the Copenhagen declaration, the enlargement rounds have required of candidate countries to enforce diverse minority protection mechanisms aimed at improving the situation and promoting the integration of minorities into the wider society. Nonetheless, while respect for human rights as regards minorities is an explicit part of the Copenhagen criteria for accession, these have not become part of EU hard law, i.e. the *acquis communautaire*. Instead, as Gwendolyn Sasse notes, EU conditionality in the field of minority protection is “best understood as the cumulative effect of different international institutions.”¹ According to her, the EU’s actual policy leverage in this area has been anchored in the recommendations of the Organization for Security and Cooperation in Europe (OSCE) with its High Commissioner on National Minorities, and in the Council of Europe’s (CoE) instruments such as the European Charter for Regional or Minority Languages (ECRML) and the Framework Convention for the Protection of National Minorities (FCNM).²

Narrowing down the focus to the enlargement policy toward the Western Balkans, the EU offered all countries in the region a clear European perspective by introducing the Stabilization and Association Process (SAP) in 1999 as a blueprint for their accession “combined with a country-to-

1. Gwendolyn Sasse, “Minority Rights and EU enlargement: Normative Overstretch or Effective Conditionality?,” In Gabriel N. Toggenburg, ed., *Minority protection and the Enlarged European Union. The Way Forward*, Local Government and Public Service Reform Initiative. (Budapest: Open Society Institute, 2004), 78-79.

2. Ibid.

country approach which allows for flexibility to tailor conditionality to the specific situation in the respective countries.”³ As to the field of minority protection, although the EU still upholds the weakly-formulated Copenhagen criterion of “respect for and protection of minorities,” it clearly and strictly applies a radically revised conditionality policy in the field of minority protection.⁴ In contrast to the first generation of EU conditionality toward the Central Eastern European (CEE) countries, Gabriel N. Toggenburg notes that the enlargement policy toward the Western Balkans reflects a finely-tuned second-generation form of EU conditionality. He deems it highly positive that minority protection has become a much more explicit part of the second-generation conditionality agenda, whose standards are mirrored in the provisions spelled out in the FCNM. The ratification of this comprehensive legally binding document is a prerequisite for EU membership; any country aspiring to join the Union needs to comply with a wide range of standards including but not limited to:

the right of equality before law and equal protection of the law; encouraging mutual respect, tolerance, intercultural dialogue and cooperation among all persons in the country of residence; the right to freedom of peaceful assembly, association, expression, thought, conscience and religion; the right to freedom of expression; linguistic freedoms, including the use of the minority language in private and in public, and before administrative and judicial authorities; the right to receive instruction in the minority language; the right of minorities to participate effectively in cultural, social and economic life, etc.⁵

Such specific requirements significantly increase the momentum that minority protection has gathered in the pre-accession phase of the enlargement process in the Western Balkans.

Irrespective of the specificity of the second-generation conditionality agenda, the EU still lacks a strong consultation capacity in the field of minority protection. The European Commission continuously affirms that “the Union is founded on the principles of liberty, democracy, respect for

3. Gabriel N. Toggenburg, “A Remaining Share or a New Part? The Union’s Role vis-à-vis Minorities after the Enlargement Decade,” *European University Institute Working Paper LAW* 15, 2006: 4.
<http://cadmus.eui.eu/bitstream/handle/1814/4428/LAWper%20cent202006.15.pdf;jsessionid=5395662D0D79CB7B5A6CBDCB2C5FA21D?sequence=1> (accessed May 20, 2012).

4. Ibid.

5. Council of Europe, *Framework Convention for the Protection of National Minorities*, (1 February 1995),
<http://conventions.coe.int/Treaty/en/Treaties/html/157.htm> (accessed May 26, 2012).

human rights and fundamental freedoms, and the rule of law,”⁶ but it never explicitly mentions “respect for and protection of minorities” as part of the underlying principles. Bearing in mind that the current candidate countries in the western Balkans still cope with improperly-resolved issues of minority protection as part of the Yugoslav wars’ aftermath, insufficient compliance with the catalogued standards may have serious post-accession consequences if it is not upheld throughout the entire pre-accession process, most notably through constant monitoring. The importance of pre-accession monitoring as a key mechanism of compliance has been frequently underlined by a number of scholars in the debate on EU conditionality, but they have never provided an insight into the ways in which monitoring contributes to the failure or success of enlargement and how it should be carried out.

In light of the aforementioned shortcoming, the aim of this thesis is to investigate in detail how progress made by the Western Balkan candidate countries in field of minority protection is monitored during the pre-accession process. By closely examining the monitoring procedure, this thesis demonstrates that in the absence of a clear monitoring framework, monitoring activities on the part of the EU are largely brought into play on an *ad hoc* basis, thereby making accession a product of political compromise; it shows that monitoring is not consistent across time and cases because it is not tied to the final outcome of the process, i.e. to accession. In this vein, this contribution seeks to emphasize the significance of monitoring for upholding compliance with EU conditionality standards of minority protection and generate recommendations for a more credible approach to pre-accession monitoring.

6. European Parliament, *Treaty on European Union (consolidated version)*, Article 6, http://www.europarl.europa.eu/hearings/20000222/libe/art6/default_en.htm (accessed May 26, 2012).

Research Questions

To achieve the aforementioned objectives, the research agenda of this thesis engages questions pertinent to the role of monitoring as an instrument of checking candidate countries' compliance with standards of EU conditionality in the area of minority protection. More specifically, it will endeavor to answer the following questions: What standards of EU conditionality mirror effective minority protection in Western Balkan candidate countries and what role does monitoring play in defining those standards? How does the EU monitor and enforce compliance of Western Balkan candidate countries with standards of minority protection and how do the EU and the candidate countries interact in the overall monitoring process?

The answers of these two sets of questions will shed light on the European Commission's opaque choices of leading the pre-accession process in the field of minority protection, whose inherent ambiguity does not allow a significant amount of progress to be truly measured and interpreted with clarity. By addressing the questions, it should be shown how the EU makes judgements about the progress of the candidates, and whether monitoring is used to add value to the outcome of the pre-accession process by inducing domestic reform. The findings of this thesis have important policy implications for the future of EU enlargement as they will allow for the opportunity to develop a revised monitoring scheme aimed not only at upholding but also at furthering compliance of candidate countries in the area of minority protection.

Literature Review

Since the fifth, and largest, enlargement round to Central Eastern Europe in 2004—often deemed a milestone in the history of European politics—the study of EU conditionality has gained significant momentum. It is considered a substantial principle of enlargement that came into being during the

pre-accession process of the latest enlargements of the European Union, “making accession dependant on the performance of the candidate countries in a number of fields and aimed at assuring that the *acquis communautaire* be implemented fully and consistently and that the candidate countries genuinely subscribe to the principles and objectives of the EU and will be able to effectively implement them.”⁷

In the realm of international relations, the concept of EU conditionality is observed through an institutionalist perspective resting on two patterns of compliance: interest-oriented and norm-oriented. The former follows the ‘logic of consequences’ using a cost-benefit analytical approach to compliance. Thereby, states are assumed to be “rational actors that weigh the costs and benefits of alternative behavioral choices when making compliance decisions in cooperative situations.”⁸ The latter is based on the ‘logic of appropriateness’ informed by processes of socialization, portraying “political action as ‘obligatory action’ and as being rule- and identity-based.”⁹

To prognosticate patterns of compliance in candidate countries and appraise the role of EU conditionality in affecting those patterns, a handful of factors that influence both the cost-benefit analysis and socialization processes of domestic elites need to be considered. Those factors exert influence either through rationalist or constructivist mechanisms. Rationalist factors, such as economic rewards, greater political power, and low-adoption costs, measure the cost-benefit balance of interest-oriented governments that “adopt EU rules if the benefits of EU rewards exceed the domestic adoption costs.”¹⁰ According to Schimmelfennig and Sedelmeier, rationalists believe that compliance is predominantly influenced by the credibility of conditionality and the size of adoption

7. Dimitry Kochenov, *EU Enlargement and the Failure of Conditionality: Pre-Accession Conditionality in the Fields of Democracy and the Rule of Law*, (Alphen aan den Rijn: Kluwer Law International, 2008), 39.

8. Jonas Tallberg, “Paths to Compliance: Enforcement, Management, and the European Union,” *International Organization* 56, no. 3, (2002): 609-643.

9. Ole Jacob Sending, “Constitution, Choice and Change: Problems with the ‘Logic of Appropriateness’ and its Use in Constructivist Theory,” *European Journal of International Relations* 8, no.4, (2002): 443-470.

10. Frank Schimmelfennig and Ulrich Sedelmeier, “Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe,” *Journal of European Public Policy* 11, no. 4, (2004): 672.

costs. They even maintain that opening of negotiations with some states boosts the credibility of rewards for all candidate countries, showing that the EU is indeed willing to conclude negotiations.¹¹

On the other side, constructivist factors such as rules, identity, and recognition influence the socialization of norm-oriented domestic political actors that adopt EU rules if they are convinced of their legitimacy.¹² These actors want assurance that the rules that they intend to comply with are consistent with the constitutive rules and norms of the community; that these rules are shared by everyone within the community, and that there is an international consensus over the rules. Important for the success of compliance is also the question of whether the candidate identifies itself with these rules, and whether these rules have a domestic resonance. Irrespective of their different functions and characteristics, the rationalist and constructivist perspectives of compliance cannot be sharply differentiated in real-life politics because they may complement each other.¹³

Based on these theoretical insights, Geoffrey Pridham adds that the EU is not only attractive because it offers bright economic prospects but also a powerful actor exerting pressure for both democracy and integration in its supranational institutions, thereby stating that “[t]he EU possesses an institutionalized regional framework which readily transmits the kind of influences and pressures that may affect the course of democratization, deliberately or otherwise.”¹⁴ Consequently, it seems that the very notion of EU membership itself is the most powerful incentive for emerging democracies, but other scholars maintain that domestic politics is the most decisive factor. Pridham

11. Frank Schimmelfennig and Ulrich Sedelmeier, “Conclusions: The Impact of the EU on the Accession Countries,” In Frank Schimmelfennig and Ulrich Sedelmeier, eds., *The Europeanization of Central and Eastern Europe*, (Ithaca and London: Cornell University Press, 2005), 215.

12. Schimmelfennig and Sedelmeier, “Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe,” 675.

13. Davide Secchi, *Extendable Rationality: Understanding Decision Making in Organizations*, (New York, NY: Springer, 2010), 52-53.

14. Geoffrey Pridham, “The European Union, Democratic Conditionality and Transnational Party Linkages: The Case of Eastern Europe,” In Jean Grugel, ed., *Democracy without Borders: Transnationalization and Conditionality in New Democracies*, (London: Routledge, 1999), 60.

concludes that whereas the international influence of the EU is indeed immense, the interaction of domestic forces with this external pressure determines the outcome of conditionality.

In contrast, James Hughes, Gwendolyn Sasse, and Claire Gordon oppose the general notion of conditionality as “a powerful incentive and disciplining structure”¹⁵ for candidate countries. They argue that conditionality is not understood in its entirety as it is often considered “a narrowly positivist framework [...] of the transposition of the EU’s rules, norms and institutional templates”¹⁶ to the candidate countries. Having identified numerous discrepancies in the European Commission’s application of conditionality in the CEE enlargement process, the authors could not demonstrate causal links between conditionality and outcomes. Thus, they deemed it necessary to broaden the definition of EU conditionality, which as a process includes formal requirements imposed by the EU but also “informal pressures arising from the behavior and perceptions of actors engaged in the political process, [offering] a deeper understanding of the enlargement process as a dynamic interaction between international incentives and rules, and domestic transition factors.”¹⁷

In a similar fashion, Heather Grabbe argues that no clear and definite conditionality was applied in the Eastern enlargement process. In her view, the EU did not manage to significantly improve public policy in the candidate countries due to “the diffuseness of its influence—partly owing to the diversity of its current member-states—and the uncertainties of the accession process.”¹⁸ What cast doubt on the process even more was the fact that “the EU had no specific test of institutional change, and its assessments were based on an opaque methodological framework.”¹⁹ Grabbe emphasizes on monitoring as a key mechanism in the membership conditionality, employed through the cycle of the European Commission’s ‘Accession Partnerships’ and ‘Regular Reports’ on

15. James Hughes, Gwendolyn Sasse and Claire Gordon, *Europeanization and Regionalization in the EU’s Enlargement to Central and Eastern Europe: The Myth of Conditionality*, (New York, NY: Palgrave Macmillan, 2004), 2.

16. Ibid.

17. Ibid.

18. Heather Grabbe, *The EU’s Transformative Power. Europeanization Through Conditionality in Central and Eastern Europe*, (Basingstoke: Palgrave Macmillan, 2006), 200.

19. Ibid., 98.

the readiness of each CEE candidate to become an EU member. According to her, the monitoring process, most notably through the Progress Reports, played a highly influential role in domestic policy-making, but “the language used in the Regular Reports was usually very general—like that in the Accession Partnerships—and the assessments jumped from description to prescription without a detailed analysis of the problems and how to overcome them.”²⁰

Comparably, Dimitry Kochenov argues that Article 49, which is the main provision on enlargement in the Treaty on the EU, “neither says anything about conditionality nor mentions any mechanisms that the Member States or the Community Institutions could employ in order to check the candidate countries’ compliance with the Copenhagen criteria.”²¹ Instead, the entire pre-accession process is conducted on the basis of different Copenhagen-related documents such as the Progress Reports, which are “very loosely rooted in the Treaties.”²² According to Kochenov, the application of EU conditionality is not so much concerned with answering the question of whether a certain candidate country has met the necessary minimum membership requirements as much as it is focused on the monitoring of reforms in the candidate country coupled with “constant adjustment of the criteria, assessment, and responding to concrete problems [arising during] the pre-accession process.”²³ *Ergo*, he believes that monitoring has a considerable impact on the outcomes of the pre-accession process.

Keeping in mind Kochenov’s remarks on the nature of the pre-accession process, EU conditionality can be also observed as a “gradual ‘ladder-climbing’ approach, whereby the country is

20. Grabbe, *The EU’s Transformative Power. Europeanization Through Conditionality in Central and Eastern Europe*, 83.

21. Kochenov, *EU Enlargement and the Failure of Conditionality*, (Alphen aan den Rijn: Kluwer Law International, 2008), 67.

22. *Ibid.*

23. Kochenov, *EU Enlargement and the Failure of Conditionality: Pre-Accession Conditionality in the Fields of Democracy and the Rule of Law*, 52.

promoted into a higher level of institutional relationship with the EU if it meets certain criteria.”²⁴ Jelena Stojanovic indicates that each level of advancement is tied to political and financial rewards, but the speed of the process is contingent on how determined a candidate country is to comply with the standards.²⁵ The overall performance of the candidate countries is monitored throughout the entire pre-accession process in that the implementation of minority rights mechanisms is closely observed and accounted for in the European Commission’s annual Progress Reports.

In the Progress Reports, “the Commission examines and assesses progress made by each of the countries regarding the Copenhagen criteria and, in particular, the implementation and enforcement of the Union *acquis*.”²⁶ The Commission has the capacity to stimulate the progress towards compliance by “favorably assessing the fulfillment of conditions if the country in question is showing genuine efforts to meet the criteria set. Such an approval by the EU and prospect of moving a level up the ladder can be very powerful incentive in the process of the fulfillment of the criteria. In case of non-fulfillment, there is no promotion of relationship, but there are no sanctions either.”²⁷ Hence, the monitoring conducted by the Commission plays a great role in upholding compliance of the candidate countries and serves as a basis for both the Council of Ministers and the European Council to decide whether a country will be granted the candidate status or start membership negotiations.

In light of the above review of the literature, it becomes evident that the number of studies on EU conditionality has significantly increased in the last decade. The academic camp has come to observe EU conditionality as an important framework for the study of both the compliance with EU

24. Jelena Stojanovic, “EU Political Conditionality and Domestic Politics: Cooperation with the International Criminal Tribunal for the Former Yugoslavia in Croatia and Serbia” (PhD diss., Central European University, 2009), 35-36.

25. Ibid.

26. Leopold Maurer, “Progress of the Negotiations,” In Andrea Ott and Kirstyn Inglis, eds., *Handbook on European Enlargement: A Commentary on the Enlargement Process*, (The Hague: TMC Asser Press, 2002), 122.

27. Stojanovic, “EU Political Conditionality and Domestic Politics: Cooperation with the International Criminal Tribunal for the Former Yugoslavia in Croatia and Serbia,” 36.

standards and the overall success of the enlargement process. Nevertheless, while the majority of scholars repeatedly make mention of monitoring as a substantial instrument of EU conditionality, no one has given a detailed account of monitoring itself. It is in view of this shortcoming that this research project endeavors to contribute to the literature on use by focusing on monitoring as a “continuing function that aims to provide [decision makers] and main stakeholders of an ongoing process with early indications of progress, or lack thereof, in the achievement of results.”²⁸

What is more intriguing in this respect is the possibility to examine the monitoring process in the cases of potential EU member states, making both a distinct scholarly and a policy contribution. By conducting a detailed analysis of the monitoring procedure, this thesis tests the hypothesis that monitoring in the field of minority protection is not directly tied to accession as the final outcome of the pre-accession process. In doing so, it argues that in the absence of a clear monitoring framework, all monitoring activities on the part of the EU in the candidate countries are brought into play on an *ad hoc* basis. The argument is supported by a case study demonstrating that monitoring in the field of minority protection is inconsistent across time and cases and is not tied to the final outcome of the process, i.e. to accession, because the progress of the candidate countries is largely constructed. The case study identifies a profound lack of clarity and specification of minority protection standards to which candidate countries in the Western Balkans need to adhere; it finds inferior quality of both analysis and interpretation of indicator findings based on a random choice of issues, poorly justified conclusions and vague recommendations. The combination of these inconsistencies in pre-accession monitoring lead to a stark unequal treatment of candidate countries over time, thus casting doubt on the overall application of both conditionality and monitoring in the course of the enlargement process. The detected shortcomings will allow for the opportunity to

28. UNDP, *Handbook on Monitoring and Evaluating for Results*, (New York, NY: Evaluation Office United Nations Development Programme, 2002), 6.

tailor an enhanced monitoring scheme aimed not only at upholding but also at furthering compliance with EU standards of minority protection in the pre-accession process.

Not least, while EU conditionality is deemed to play a significant role in the enlargement process, one might easily think that the effects of EU conditionality on minority protection regimes is not as important as the effects it has on other areas of the Copenhagen criteria such as the rule of law or the existence of a functioning market economy. Such a position clearly overlooks that it was in the Balkans where the European Union gave birth to its existing foreign policy to prevent a severe war to spin out of control. In view of its previous experience in the Western Balkans, where the emergence of the modern states was preceded by genocide and expulsion, the EU clearly states in the European Security Strategy that the nearer violent and frozen conflicts are to home, the more serious their impact on European interests is. To be more specific, the EU maintains that

violent or frozen conflicts [...] threaten regional stability. They destroy human lives and social and physical infrastructures; they threaten minorities, fundamental freedoms and human rights. Conflicts can lead to extremism, terrorism and state failure. [...] Regional conflicts need political solutions but military assets and effective policing may be needed in the post conflict phase.²⁹

Accordingly, it is neither in the interest of the EU that ethnic conflicts are polarized anew in its immediate neighborhood, nor could states in the Western Balkans keep politics calm without getting appropriate impetus from Brussels. In light of the importance to generate political solutions to regional conflicts, the protection of minority rights is an indispensable tool to prevent further conflicts by “encouraging domestic circumstances in which the religion, race, language and ethnicity of all peoples can be preserved and promoted within existing borders.”³⁰

29. European Union, *A Secure Europe in a Better World: European Security Strategy*, Brussels, (12 December 2003), <http://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf> (accessed May 25, 2012)

30. Jennifer Jackson Preece, *Minority Rights*. (Cambridge, UK: Polity Press, 2005), 9.

Research Design

To unravel the rationale behind EU conditionality in the Western Balkans and see how pre-accession monitoring is conducted in the field of minority protection, this research project analyzes two candidate countries from the region: the Republic of Croatia and the Republic of Macedonia. The research agenda is based on the Method of Difference as elaborated by John Stuart Mill. According to this model, “if one group of situations leads to an effect E, but another group does not, and the only difference between the two groups is that C is present in the former but not the latter, then C is the cause of E.”³¹

These two particular countries are chosen on the basis of their closely-related political development and strong cultural ties. An equally important similarity is the fact that both Croatia and Macedonia experienced armed ethnic conflicts within their borders although different in scope and time: the former witnessed an internecine conflict between Croats and Serbs, whereas the latter was on the brink of civil war between Macedonians and ethnic Albanians. Ever since their secession from socialist Yugoslavia in 1991, both countries have been committed to transforming their societies in the spirit of the Copenhagen criteria, namely in liberal democracies guaranteeing rule of law, human rights and respect for and protection of minorities, and in free market economies. The fact that they endeavored to take on the obligations of EU membership, and ensure the Union’s capacity to absorb new members, while maintaining the momentum of European integration, makes them good cases for testing how EU conditionality is employed in the Western Balkans.

In terms of their European perspective, both countries were given the same conditions for EU membership and both have followed similar patterns of domestic change. Croatia gained the candidate status in 2004, while Macedonia acquired it one year later. Nevertheless, the European Council has not approved the opening of Macedonia’s accession negotiations as recommended by

31. Joe Y. F. Lau, “Mill’s Methods,” In Joe Y. F. Lau, *An Introduction to Critical Thinking and Creativity: Think More, Think Better*, (Hoboken, New Jersey: John Wiley & Sons, Inc, 2011), 126.

the Commission for a third year in a row because of the name dispute that the country has with Greece, its southern neighbor. What is puzzling is that while the compliance records of both countries are similar, Croatia was lauded for having made more advanced progress towards the EU than Macedonia and thus closed the membership negotiations in 2011. In this sense, these two cases allow for the possibility to address this variation in outcomes despite similarities in antecedent conditions by carefully examining the difference in the Commission's approaches to progress monitoring in both countries.

In order to test that monitoring in the field of minority protection is not directly tied to accession as the final outcome of the pre-accession process, this project will combine conventional qualitative content analysis (QCA) and semi-structured interviews. QCA is suitable to “making replicable and valid inferences from data to their context, with the purpose of providing knowledge, new insights, a representation of facts and a practical guide to action.”³² Aiming to “attain a condensed and broad description of a phenomenon,”³³ the analysis results in concepts or categories that will help to “build up a model, conceptual system, conceptual map or categories”³⁴ describing monitoring as a particular phenomenon. The conventional type of QCA design is “appropriate when existing theory or research literature on a phenomenon is limited. Researchers avoid using preconceived categories, instead allowing the categories and names for categories to flow from the data, [and] immerse themselves in the data to allow new insights to emerge.”³⁵ The conventional QCA employed in this thesis focuses on the sections on Minority Rights, Cultural Rights and the Protection of Minorities in the European Commission's annual Progress Reports. Thereby, I

32. Klaus Krippendorff, *Content Analysis: An Introduction to its Methodology*, (Sage Publications, Newbury Park, 1980), Quoted in Satu Elo and Helvi Kyngäs, “The Qualitative Content Analysis Process,” *Journal of Advanced Nursing* 62, no. 1 (2008): 107–115.

33. Ibid.

34. Ibid.

35. Nancy L. Kondracki, and Nancy S. Wellman, “Content Analysis: Review of Methods and Their Applications in Nutrition Education,” *Journal of Nutrition Education and Behavior* 34 (2002): 224-230. In Hsiu-Fang Hsieh and Sarah E. Shannon, “Three Approaches to Qualitative Content Analysis,” *Qualitative Health Research* 15, no. 9 (2005): 1277-1288.

proceed inductively to reconstruct the most important themes and categories pertinent to monitoring and sketch the framework of pre-accession monitoring in Croatia and Macedonia. The analysis covers a time-period of seven years in the case of Croatia (2005-2011) and six years in the case of Macedonia (2006-2011): starting from the year in which the respective country acquired the candidate status until the year of 2011, in which the latest Progress Reports were issued for both countries by the European Commission.

Additionally to the qualitative content analysis, in order to appraise the tenor of attitudes toward monitoring in the pre-accession process, deconstruct the reasons for differential monitoring, and see the consequences of this variation, conclusions will be made from source material of transcript of semi-structured interviews. Allowing both the researcher and the interviewee to interact as equal partners, the semi-structured interviews provide ample room for interventions on the part of the researcher to ask open-ended questions in order to identify the interviewee's values and feelings toward an issue that otherwise remain a matter of personal concern. Hence, in the case of Croatia, important clues on pre-accession monitoring were given in the dialogue provided by Antonija Petricusic, Member of the Negotiating Team for the Membership of Croatia in the EU, and Erol Akdag, Attaché for Human rights, Minorities, Demining and Civil Society at the Delegation of the European Union to the Republic of Croatia. In the case of Macedonia, insights on the monitoring process were provided by Malinka Ristevska Jordanova, Director of the Institute for European Politics in Skopje. The interviewees pointed to various institutional and political practices that are not evident in the European Commission's Progress Reports themselves; this served as a rare opportunity to get a credible insight into the interaction between all parties involved in the pre-accession process.

The thesis is organized in three comprehensive chapters. At the outset, I provide a detailed insight into the tenets of monitoring as conducted by various international organizations, thereby

shedding light on what purpose the process serves, what factors influence it, and how it is carried out in an ideal scenario. Second, in order to examine the EU's approach to pre-accession monitoring of progress in the field of minority protection, a qualitative content analysis of the European Commission's Progress Reports will be conducted. Combined with semi-structured interviews with policy makers and observers from both countries, the analysis will look at the ways in which judgments are made in the monitoring process, how candidate country governments react on these judgments, and how EU monitors ultimately respond on the candidates' feedback. By comparing the European Commission's approach to monitoring across candidate countries in the field of minority protection based on the QCA and the reproduction of the meanings of the realities as seen by the interviewees, it shall be concluded in the final part to what extent pre-accession monitoring has been consistent in the region of the Western Balkans, what role it plays in defining minority protection standards, and in what ways the EU and the candidate countries interact in the overall monitoring process.

CHAPTER 1: CENTRAL TENETS OF MONITORING

Amid the fast evolving changes of contexts in which international organizations operate, demands for credibility have become much more pronounced. Stakeholders make constant pressures for the practice of good governance, greater policy effectiveness, accountability and transparency, and delivery of tangible results. In order to meet these objectives, international organizations have repeatedly sought to make use of monitoring as an instrument of supporting the management of policies, programs, and projects. Although scholars have ascribed great importance to monitoring in the context of EU conditionality, they have avoided giving a detailed account of it. In view of this deficiency, the main purpose of this chapter is to synthesize existing knowledge about monitoring in that it addresses the question of what exactly it is and discusses the tools and methods that are frequently used by an array of international organizations.

Efforts to generate a unified definition of monitoring have been manifold. Nonetheless, considering the distinct nature of the organizations at the global level, definitions of monitoring are often narrowed down according to the organization's institutional design and day-to-day operations. In light of this variety, what follows is a brief catalogue of the more salient definitions used by several prominent international organizations. The Organization for Economic Cooperation and Development (OECD) deems monitoring

a continuous function that uses the systematic collection of data on specified indicators, to provide management and the main stakeholders of an ongoing development intervention with indications of the extent of progress and achievement of objectives and progress in the use of allocated funds.³⁶

Comparably, the Guide for Monitoring and Evaluation of the United Nations International Children's Emergency Fund (UNICEF) defines monitoring as

36. Marelize Görgens and Jody Zall Kusek, *Making Monitoring and Evaluation Systems Work*, (Washington DC: The International Bank for Reconstruction and Development/The World Bank, 2009), 2.

the periodic oversight of the implementation of an activity which seeks to establish the extent to which input deliveries, work schedules, other required actions and targeted outputs are proceeding according to plan, so that timely action can be taken to correct deficiencies detected.³⁷

A concise definition that may be adapted for the purposes of this thesis is to be found in the Project/program Monitoring and Evaluation (M&E) Guide of the International Federation of Red Cross and Red Crescent Societies (IFRC):

Monitoring is the routine collection and analysis of information to track progress against set plans and check compliance to established standards. It helps identify trends and patterns, adapt strategies and inform decisions for project/program management.³⁸

Publications by various international organizations also refer to monitoring as to ‘process evaluation’ as it deals with the implementation process, thereby offering “opportunities at regular predetermined points to validate the logic of a program, its activities and their implementation, and to make adjustments as needed.”³⁹ In doing so, monitoring serves an organization as a worthwhile opportunity to:

[1] engage beneficiaries so that they feel ownership of results being achieved and are motivated to sustain them; [2] demonstrate achievement of development results, how they benefit the intended people, and leverage support of the beneficiaries and other stakeholders to address any operational challenges faced; [3] nurture an inclusive and purposeful monitoring culture to make implementation and management effective [...] as well as to ease gathering of data and evidence objectively to back achievements and make decisions.⁴⁰

1.1 Key Components of Monitoring

At the core of the monitoring process is the measurement and assessment of an actor’s performance, which is defined as progress towards and achievement of results. According to Roberto Mosse and Leigh Ellen Sontheimer, “it is critical that managers regard performance

37. UNICEF, *A UNICEF Guide for Monitoring and Evaluation: Making a Difference?* <http://preval.org/documentos/00473.pdf> (accessed May 5, 2012)

38. International Federation of Red Cross and Red Crescent Societies, *Project/program Monitoring and Evaluation Guide*, (Geneva, Switzerland: International Federation of Red Cross and Red Crescent Societies, 2011), 11.

39. Ibid.

40. UNDP, *Handbook on Planning, Monitoring and Evaluating for Development Results*, 100.

measurement as an integral part of their institution's mission."⁴¹ What enables monitoring to furnish important clues about issues calling for attention or action as regards performance is reporting, a process by which collected and analyzed data is presented in the form of usable information.⁴² It is not only deemed the most visible but also the most critical component of monitoring because irrespective of how well data may be collected, if it is not well presented, it can neither be well understood nor conveniently used.⁴³ According to the Red Cross Project/program Monitoring and Evaluation Guide, reporting should be relevant and useful—serving a specific purpose; it should be timely for its intended use and complete—giving insights into a sufficient amount of information for the intended purpose. Furthermore, reporting should be consistent in that it uses formats that allow comparison over time, thereby enabling progress to be tracked against indicators and other targets that have been previously set up. Not least, reporting should be simple and reliable—providing an accurate representation of the facts.⁴⁴

As important as reporting is, the United Nations Development Program (UNDP) underlines that good monitoring is not mirrored in “merely producing reports in a prescribed format at set intervals.”⁴⁵ To uphold accountability and compliance with standards established by an organization, one needs to maintain balance between reporting and two other key components of monitoring that are interconnected and mutually supportive. The first is validation, which verifies the accuracy of the progress accounted for by “identifying additional primary and/or secondary sources to further triangulate analysis.”⁴⁶ The second is participation, where monitors obtain responses by partners to

41. Roberto Mosse and Leigh Ellen Sontheimer, *Performance Monitoring Indicators Handbook*, (Washington DC: The International Bank for Reconstruction and Development/The World Bank, 1996), 23.

42. International Federation of Red Cross and Red Crescent Societies, *Project/program Monitoring and Evaluation Guide*, 44.

43. *Ibid.*, 57.

44. *Ibid.*, 58.

45. UNDP, *Handbook on Monitoring and Evaluating for Results*, (New York, NY: United Nations Development Program Evaluation Office, 2002), 32.

46. International Federation of Red Cross and Red Crescent Societies, *Project/program Monitoring and Evaluation Guide*, 54.

progress-related issues and proposed actions, thereby helping “to build ownership for the follow-up and utilization of findings, conclusions and recommendations.”⁴⁷ In doing so, the optimum balance between reporting, validation, and participation helps the monitoring process to translate into an opportunity for credible analysis and organizational learning, and for informing decisions to guide ongoing project or program implementation.

1.2 Step-by-step Explanations of Monitoring Factors

How is monitoring designed within and implemented by an international organization in an ideal scenario? Similarly to the aforementioned issue of the impossibility to provide a standard definition of monitoring, due to the distinct institutional design and objectives of each organization, no prototypical model of good monitoring exists that is to be used in all situations. An organization’s approach to monitoring is to a great extent contingent on the “complexity, scope and context of the results being pursued.”⁴⁸ Irrespective of the duration, it is of utmost importance that monitoring is conducted during the whole of a project, program, or policy because “continuing streams of monitoring data and feedback add value at every stage, from design through implementation and close-out.”⁴⁹ Not least, according to the UNDP, it is impossible that monitoring is carried out on an *ad hoc* basis. Instead, it needs to be understood as a joint activity in which all key stakeholders put collaborative efforts aimed at the consistent use of monitoring.⁵⁰

Along those lines, Roberto Mosse and Leigh Ellen Sontheimer argue that monitoring cannot do much on its own, but “in the proper environment it inspires action”⁵¹ and spurs dialogue. Based on this rationale, they suggest that key stakeholders need in a timely way to agree on a clear

47. Ibid., 50.

48. UNDP, *Handbook on Planning, Monitoring and Evaluating for Development Results*, 100.

49. Marelize Görgens and Jody Zall Kusek, *Making Monitoring and Evaluation Systems Work*, 3.

50. UNDP, *Handbook on Planning, Monitoring and Evaluating for Development Results*, 117.

51. Mosse and Sontheimer, *Performance Monitoring Indicators Handbook*, 23.

framework in order to ensure a systematic performance of monitoring. Thereby, a number of factors are integral to the effective use of monitoring: data collection and management, the institutional arrangements of managing information, and the use of feedback from the monitoring process.⁵² Each of these factors has different properties and carries its own weight, but they are all interconnected—none of them can achieve positive results in complete isolation. In what follows, a brief overview is given of the factors elaborated by Mosee and Sontheimer in the World Bank's Performance Monitoring Indicators Handbook.⁵³

1.2.1 Project Identification, Preparation, and Appraisal

At the outset, it is essential that all parties involved have an accurate picture of the context when they initiate the planning of a certain project, program or policy. Project planning should begin with the definition of objectives that mirror the desired goals of the respective program. These objectives need to be established “in terms of the measurable targets on which performance indicators will be based.”⁵⁴ To avoid ill-defined objectives, stakeholders need to mutually agree on the purposes of a program at its earliest stage. Unambiguously formulated objectives also bring a portion of accountability that may make officials distinctly uncomfortable. If there is no willingness to commit to clearly set objectives, the program may become a subject of political disputes. Therefore, an environment of confidence and trust between all stakeholders needs to be created. Such an endeavor requires that monitors understand each other's attitudes towards the issues raising concern and honestly collaborate towards delivering the most objective analysis possible. As a prerequisite, monitors need to simultaneously broaden the knowledge of their subject and master their critical thinking skills. This expertise will allow them to be more open to partners and contribute with their

52. Ibid.

53. Mosee's and Sontheimer's framework is mostly applied to development projects. The entire framework can be found in the *Performance Monitoring Indicators Handbook*, 23-27.

54. Mosse and Sontheimer, *Performance Monitoring Indicators Handbook*, 24.

honesty to a more transparent and effective project. If all this seems unachievable, Mosee and Sontheimer recommend that the organization conducting the monitoring activities “should dissociate itself from the project.”⁵⁵

1.2.2 Data Collection and Management

Once the program’s objectives have been spelled out, monitoring proceeds with data collection and management. The data should be reliable and cost-effective, and it should measure both processes and results. The rationale behind the latter is that for a project to result in success, it is not only important to know what the project is delivering but also whether its outcomes are beneficial to all parties involved. Therefore, as pointed out by Mosee and Sontheimer, “performance measured by the data should focus on what the project is accomplishing, especially how it affects the people involved in the process.”⁵⁶

Two significant caveats need to be taken into consideration in the course of data collection and management. Firstly, there is the danger of establishing a separate measurement bureaucracy within a single program structure—while data users may not properly understand what the numbers they are given represent, data collectors may have a lack of appreciation for the problems of stakeholders and managers face. It is in the light of this concern that the staff responsible for producing the data should maintain strong contact with the party using it. Put another way, information generated should be incorporated in the project’s management structure in a similar way as performance measurement is part of project design.

To complicate matters further, if performance measurement frameworks use data that is deemed threatening by those who report it, refusal to comply with bureaucratic procedures may arise. Decision makers need to be actively involved in the performance measurement process so as

55. Mosse and Sontheimer, *Performance Monitoring Indicators Handbook*, 26.

56. *Ibid.*, 25.

to stimulate as much ideas as possible and reinforce the notion that a collective effort is given through the entire process. As performance measurement is strongly connected with detection and prevention aimed at achieving compliance, managers necessarily need to know how and by whom the data is going to be used and be assured that the data will not be used to judge them personally.

1.2.3 Institutional Arrangements and Capacity Building

Data collection arrangements attach great significance to the institutional arrangements between the parties involved in a program. The rationale for indicators demands that the indicator data be of value to everyone. The monitoring design of a program should rest on the reporting arrangements which have been already employed by an organization, while further improving the technical skills needed to frame data collection, conduct studies and surveys, analyze data, and “report results in a format that is relevant to project management.”⁵⁷ The organization can also seek technical assistance from third parties if a more coherent monitoring framework is necessary.

1.2.4 Feedback from Monitoring Efforts and Interpreting Indicators

Monitoring provides an important feedback loop for learning about the progress and outcomes of projects, programs, and policies. On the basis of the feedback received, decision makers get the possibility of using monitoring as a sophisticated form of learning and knowledge. According to the UNDP:

Learning must [...] be incorporated into the overall programming cycle through an effective feedback system. Information must be disseminated and available to potential users in order to become applied knowledge. [...] Learning is [...] a key tool for management and, as such, the strategy for the application of [...] knowledge is an important means of advancing toward outcomes. [...] Outcomes present more variables around which learning can and must take place”⁵⁸

57. Mosse and Sontheimer, *Performance Monitoring Indicators Handbook*, 25.

58. UNDP, *Handbook on Monitoring and Evaluating for Results*, 75-76.

In view of the importance of bringing about improvements through learning, it is an imperative for an organization to ensure that the feedback loop for learning functions advantageously. This is ideally done by including local specialists and project administrators who will focus on maintaining meaningful feedback beyond statistical data—“excessive focus on numeric ratings may sabotage the feedback loop.”⁵⁹ The involvement of national experts facilitates immediate feedback on implementation and recommendations. In doing so, decision makers get a firm understanding of the big picture, which in turn enables them to better consider and coordinate overall policies and strategies within complex programs. As Thompson and Fryxell conclude, “encouragement and reward go a long way toward fostering cooperation, improving trust and interaction, [...] and fostering innovative ways to deal with [...] concerns on the ground.”⁶⁰

59. Julianne Thompson and Jenny Fryxell, *Best Management Practices (BMP) Implementation Monitoring Keys to Success and Pitfalls to Avoid*, oral presentation at the Advancing the Fundamental Sciences: Proceedings of the Forest Service National Earth Sciences Conference in San Diego, CA, (18-22 October 2004), <http://stream.fs.fed.us/afsc/pdfs/Thompson.pdf> (accessed May 28, 2012).

60. Ibid.

CHAPTER 2: PRE-ACCESSION MONITORING OF COMPLIANCE IN THE FIELD OF MINORITY PROTECTION *IN ACTU*

2.1 *The Case of the Republic of Croatia*

The formulation and implementation of pre-accession monitoring in the candidate countries is an endeavor involving numerous stakeholders on both ends of the process. Reflecting on the preparation of the Progress Reports as the most visible component of pre-accession monitoring, Erol Akdag, Attaché at the EU Delegation to the Republic of Croatia explains that the first draft of each Progress Report is written by the Delegation's staff in the candidate country in consultation with both the national government and the European Commission. In the course of the drafting process, the European Commission holds a regular briefing session with the Council of Europe and the OSCE. Once written, the draft is forwarded to the Horizontal Coordination Unit at the Enlargement Directorate-General in Brussels where the integral text is reproduced in a more diplomatic tone. The final version of the Report is then approved by the Commission without any radical changes to it. Nonetheless, Akdag emphasizes that the Commission indeed seeks to soften the tone of each Progress Report issued.⁶¹

In the analysis of the Commission's pre-accession assessment of minority rights, cultural rights and the protection of minorities in Croatia, a general definition of 'minority' could not be found in any of the seven Progress Reports analyzed. What is obvious in this regard is only that the notion of minority in all of the Reports is confined to national minorities, most notably ethnic Serbs and Roma. The overall political and social situation is to a great extent assessed as unfavorable for both groups. With respect to Serbians, who constitute the dominant ethnic minority in Croatia, the Commission maintains in most of the Reports that the Serbian minority is still not truly integrated

61. Erol Akdag, interview by author, personal interview, Zagreb, March 27, 2012.

into the wider Croatian society. Despite acknowledging some efforts on the part of Croatia to improve the position of ethnic Serbs, the country is repeatedly reported to come short of ensuring the return of refugees, repossession of property and provision of housing. Without providing any detailed assessment based on primary or secondary sources, the Commission only calls on the Government to do more “in terms of tackling ethnic bias in the area of war crimes.”⁶²

Concerning the Roma minority, Antonija Petrucic asserts that Brussels does not want any sizeable influx of Roma into the EU, so it insists that the situation of Romani people be dealt with and possibly improved in the candidate country prior to accession into the EU.⁶³ However, the vaguely constructed syntactic constituents of the rather brief paragraphs at the end of each report do not offer a clear assessment of the Roma minority’s situation. While the Commission clearly states that “there have been further improvements”,⁶⁴ it catalogues each year a significant number of difficulties that Roma face in exercising their rights. First and foremost, Roma are prevented from exercising their rights because the majority of them have no documents on citizenship. Furthermore, they are deprived of equal opportunities to access to information, knowledge and skills; provision of public services is complicated as public authorities often neglect the problems that Roma have in their isolated settlements.⁶⁵ Bearing in mind these difficulties, Antonija Petrucic’s maintains that “domestic actors rarely attempt to elaborate on the content of the policies aimed to improve the situation of Roma.”⁶⁶ Her statement strongly resonates with Rachel Guglielmo’s position on the political climate in the CEE countries at the time of their accession according to which “pushing beyond formal compliance [...] has proven more difficult. CEE governments’ willingness to adopt policies for Roma has not been matched by a commitment to ensure their effective

62. European Commission, Croatia 2006 Progress Report, 14.

63. Antonija Petrucic, interview by author, personal interview, Zagreb, March 16, 2012.

64. European Commission, Croatia 2011 Progress Report, 13.

65. Ibid.

66. Antonija Petrucic, interview by author, personal interview, Zagreb, March 16, 2012.

implementation.”⁶⁷ Guglielmo asserts that such policies come short of meeting enough political or financial backing, and enjoy poor public support, even from the Roma minority itself.⁶⁸

Turning again to pre-accession monitoring, the analysis of the Reports allows a clear dichotomy to be recognized between progress made by legislature and executive. The legislature’s progress is measured by the number of legal amendments or diverse provisions adopted by the national Parliament in the reporting year. Thereby, the Commission emphasizes the Constitutional Law on the Rights of National Minorities (CLNM) as the linchpin of minority protection in the country. By adopting the Constitutional Law in 2002, Croatia has put itself under an obligation to ensure realization of special rights and freedoms of members of national minorities. Most important provisions are as follows:

own language and script, in private and public use, and in official use; education and schooling in the language they are using; usage of own insignia and symbols; cultural autonomy by means of keeping, developing and expressing their own culture; right to confessing own religion [...]; access to media [...] and performing of actions of public information [...]; representation in representation bodies on national and local level, and in administration and judicial bodies; participation of members of national minorities in public life and administration of local affairs by means of Councils and representatives of national minorities, etc.⁶⁹

Paradoxically enough, the Commission observes the CLNM as the key category of success in the field of minority protection, but it never makes reference to any of its provisions. Instead, it focuses on technicalities by giving an account of what has been brought into play “based on the relevant provisions [emphasis mine] of the CLNM.”⁷⁰ An answer to the question of whether increased quantity of adopted legislation reflects a strong national commitment to enhance Croatia’s minority protection regime cannot be found in any of the Commission’s own contributions.

67. Rachel Guglielmo, “Human Rights in the Pre-accession Process: Roma and Muslims in an Enlarging EU,” In Gabriel N. Toggenburg, ed., *Minority protection and the enlarged European Union. The way forward*, Local Government and Public Service Reform Initiative. (Budapest: Open Society Institute, 2004), 39.

68. Ibid.

69. Constitutional Law on the Rights of National Minorities, Official Gazette, no. 155/2002, Article 7, (December 13, 2002). http://www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation_Constitutional-Law-on-the-Rights-NM.pdf (accessed May 21, 2012).

70. European Commission, Croatia 2005 Progress Report, 21.

As regards the executive, the Commission's analysis of the implementation of the CLNM seems far more substantial as it gives a detailed overview of the limitations of the implementation process. However, though narrowing the gap between the adoption of legal acts and their effective implementation is of its greatest concern, by merely listing the areas with "mixed developments", the Commission neither indicates what should be given priority, nor does it provide a key to measure the ideal level of implementation progress. Indicative in this respect is the fact that many issues accounted for at the beginning of the pre-accession process gradually lost their weight in the late stages. Hence, the local minority councils and the umbrella Council for National Minorities are mentioned in the 2005 Report as crucial for raising awareness among the local authorities and minority groups.⁷¹ In the later Reports, however, the Commission does not deal with the councils' activities any longer—it only reports how much funds these bodies received from the state budget.

The aforementioned shortcoming demonstrates beyond doubt that the Commission is only interested in the outcome of the councils' work and not in the way in which it has been achieved. Even more, it shows that the Commission is not deeply concerned with the sustainability of the institutional innovations or the minority protection policies that have already been established. Rather, one gets the impression that the Commission is much more interested in ensuring the sustainability of its own powers to manage the pre-accession process by collecting, organizing, and reporting a sheer quantity of information. In terms of data collection and management, Erol Akdag reveals that the EU Delegation's team collects and compares information from several external sources in the form of figures on employment of minorities in public administration, discrimination cases brought to the Ombudsman, measures taken and commitments made by the government, feedback by NGOs on the implementation of governmental policies, etc.⁷²

71. European Commission, Croatia 2005 Progress Report, 21.

72. Erol Akdag, interview by author, personal interview, Zagreb, March 27, 2012.

In relation to the Commission's strong focus on statistical data, Antonija Petricusic underlines that "it is all about numbers and tables; there is no discussion on the substance of the measures or on their implications for the future."⁷³ She even goes a step further by stating that "what is bargained during the accession talks in the field of minority protection is close to nothing. Negotiators representing the national government do only what they are told to do by Brussels' bureaucrats. The candidate country rarely gets an opportunity to expose its own position on certain domestic issues."⁷⁴ By way of illustration, Petricusic explains that when Croatia was opposing a reform required by Brussels because it considered the reform conflicting with Croatian law, the bureaucrats at the other end of the negotiating table turned a blind eye to the issue but admonished that sooner or later the reform will need to be put in place. As concluded in her own words: "You cannot simply say that you will not adopt it in the future."

Similar observations can be made with regard to the aforementioned problem of refugee return. The Commission makes only brief mention of refugee return in the 2005 and 2006 Progress Reports. Intriguingly enough, from 2007 onwards, this question is revisited in great detail every year; particular attention is thereby paid to the lack of housing as a "key obstacle to sustainable refugee return."⁷⁵ Despite deeming it highly important, the Commission does not spell out any reasons as to why it has decided to concentrate on the refugee problem only at the late stages of the reporting process. The same can be said for the European Commission choice to mention the government's action plan for the "Decade of Roma Inclusion 2005-2015" for the first time in the 2007 Progress Report. The progress reported on this framework is considered as an important step towards the improvement in the Roma's overall position. In the later Reports, however, the Commission neither refers to this plan any longer, nor does it make any further pressure on the government to aid the

73. Antonija Petrusic, interview by author, personal interview, Zagreb, March 16, 2012.

74. Ibid.

75. European Commission, Croatia 2010 Progress Report, 14.

integration of Roma. Such an inconsistency clearly confirms that the pre-accession process in many instances is carried out based on the mantra of “turn a blind eye and a deaf ear every now and then, and we get on marvelously well.”⁷⁶ Furthermore, the random choice of issues on the part of the Commission leaves the impression that the longevity of the pre-accession process progressively exhausts the Commission’s capability to analyze in detail the progress of Croatia made in areas that have been already accounted for. Shifting the focus to other yet-to-be-explored areas, the Commission breaks the continuity in monitoring and limits the possibility of putting forward follow-up suggestions that might add value to the candidate country’s record of minority protection.

Touching on its capacity to generate recommendations, the Commission fails to move beyond nebulous phrases such as “further efforts are needed.” Apart from the ambiguous recommendation to take “appropriate measures to protect those still potentially exposed to threats or acts of discrimination, hostility or violence,”⁷⁷ or simply requiring a “more consistent approach by regional offices,”⁷⁸ no scheme for Croatia’s enhanced level of minority protection is provided. This makes it obvious that the European Commission does not demonstrate strong willingness to give a roadmap on necessary reforms and dilutes the picture of the institution as—what Antonija Petrusic would call—the “moving engine of enlargement strong enough to induce reforms in the candidate countries.”⁷⁹

2.2 The Case of the Republic of Macedonia

The analyses conducted by the European Commission in the Progress Reports on Macedonia cover the period between 2006 and 2011. Bearing in mind the flexibility to tailor conditionality to the specific situation in the country, the implementation of the Ohrid Framework Agreement (OFA)

76. This quotation is recorded for the first time in the book *More Letters from Martha Wilmot: Impressions of Vienna, 1819-1829*, written by Martha Wilmot and Catherine Anne Daschkaw Bradford Brooke.

77. European Commission, Croatia 2010 Progress Report, 13.

78. Ibid., 15.

79. Antonija Petrusic, interview by author, personal interview, Zagreb, March 16, 2012.

during a reporting year occupies central importance in the Commission's assessment of minority protection. The Commission's position, as presented in the Progress Reports, mirrors the view of the Ohrid Framework Agreement as a "crucial guarantee of the rights of the ethnic communities in the country"⁸⁰ aspiring full membership in the European Union. The latter, having learned important lessons from its own failures to intervene in the Balkans during the nineties, proved fervently committed to bring an end to the armed ethnic conflict between Macedonians and ethnic Albanians in 2001 by brokering the signature of the Ohrid Framework Agreement.

To give an overview, the OFA's transposition into Macedonia's Constitution has reaffirmed the sovereignty, integrity and unitary character of the Macedonian state and both preserved and reflected the multiethnic character of the country in its public life.⁸¹ It introduced a new decentralization pattern giving municipalities more self-government; brought equitable representation in the security sector (police and army) and in the administration and public enterprises based on nondiscrimination; heralded the use of any language spoken by at least twenty percent of the country's population as an official language in certain situations; allowed for state funding for university level education in languages spoken by at least twenty percent of the population of Macedonia, and introduced a two-thirds majority vote for questions of chief interest of the state in both the Parliament and the municipalities.⁸²

In all Reports examined, the OFA is depicted as the most important category of Macedonia's success in the field of minority protection—it is deemed essential for the stability of the country⁸³ and to "foster a positive environment for further reforms."⁸⁴ The Commission shows a clear vision

80. European Commission, Macedonia 2007 Progress Report, 15.

81. Bashkimi Demokratik per Integrim, *Ohrid Framework Agreement*, (August 13, 2001), http://www.aliahmeti.org/dokumente/framework_agreement.pdf (accessed May 27, 2012)

82. Zoran Ilievski, "Protection of Minority Rights, Euro-atlantic Integration and the Power-Sharing Model in Macedonia," In E. Lantschner, J. Marko, and A. Petricusic, eds., *European Integration and its Effects on Minority Protection in South Eastern Europe*, (Baden-Baden: Nomos, 2008), 189-210.

83. European Commission, Macedonia 2006 Progress Report, 14.

84. European Commission, Macedonia 2007 Progress Report, 15.

of the OFA by stating that “all political parties must continue to work on building consensus on ethnic-related issues, in full compliance with the letter and spirit of the Ohrid Framework Agreement.”⁸⁵ However, it seems to be largely ignored that the implementation of the OFA carries the burden of decade-long ethnic intolerance between Macedonians and Albanians. The notion of dialogue woven through the text of each Report seems to be applied only to the political elite; the Commission assesses the 10th anniversary of the OFA as “an important opportunity for enhanced dialogue between the communities in the country”⁸⁶ but does not give any indicators on which this assessment is made. Developments taking place outside of the realm of politics are not paid close attention apart from being compiled in a list of items ‘causing concern,’ including but not limited to content of the first national encyclopedia, the urban project of Skopje 2014, and the “violent confrontation between members of the two main communities” inside the Kale fortress in Skopje.⁸⁷

The aforementioned inconsistency makes it obvious that the Commission does not want to make any guesses as to what led to escalation, how the events developed, or assess specific causal contributions, but refusing to give an insight into how these developments affected the communities leaves the big picture of Macedonia’s minority protection regime completely unclear. If one takes the increase in incidents as an indicator of the state institution’s inability—or failure—to adequately implement the OFA, the Commission’s overall positive assessment that “interethnic relations have continued to improve”⁸⁸ can easily be brought into question. In the light of this concern, the Reports clearly convey that the Commission’s main preoccupation has been to solely ensure that the institutional implementation of the Ohrid Framework Agreement—in terms of political dialogue and isolated from the broader social context—is not interrupted.

85. European Commission, Macedonia 2006 Progress Report, 15.

86. *Ibid.*, 19.

87. European Commission, Macedonia 2011 Progress Report, 20.

88. European Commission, Macedonia 2006 Progress Report, 14.

A matter of serious concern to the Commission is the functioning of the Secretariat for the Implementation of the Ohrid Framework Agreement (SIOFA). The Commission highlights it as highly important in the 2009 Report that “a specialized agency for protecting the rights of these minorities is set up [...] to act as an advisory body to the government on minority issues.”⁸⁹ The position of the Commission does not change much throughout the pre-accession monitoring process: The SIOFA is repeatedly assessed to lack a sound administrative capacity. The Commission clarifies its position by explaining that the SIOFA faces problems in recruiting sufficiently qualified senior staff or has low strategic planning capacities and internal control standards.⁹⁰ The Commission states that “greater efforts are needed to ensure [the Ohrid Agreement’s] effective implementation.”⁹¹ Nonetheless, a definition of what is meant by ‘effective’ is not provided. Instead, the Commission praises the initiative of the SIOFA to prepare the government’s strategic plan for implementing the OFA over the period 2010-2012 in close cooperation with the OSCE. It is the Commission’s belief that this kind of cooperation “assigns a much greater role to the Secretariat in coordinating, promoting and monitoring implementation of the [OFA].”⁹² While no explanation exists as to why noncooperation has previously been tolerated, the fact that the Commission welcomes cooperation with the OSCE in the face of the 10th anniversary of the Agreement’s signature seems to imply that such a recommendation comes in response to the national government’s failure to effectively implement the Agreement.

Cooperation with the OSCE is also seen as an avenue to success in the education system, which is explicitly criticized for having “no comprehensive policy to bridge the gap between the communities.”⁹³ In light of the concern that several municipalities maintain separate ethnic shifts in

89. European Commission, Macedonia 2009 Progress Report, 20.

90. European Commission, Macedonia 2011 Progress Report, 19.

91. Ibid.

92. European Commission, Macedonia 2010 Progress Report, 21.

93. European Commission, Macedonia 2006 Progress Report, 15.

public schools, the Commission emphasizes in the 2009 Report that “the recommendations of the OSCE High Commissioner for National Minorities, which aim to support integration of ethnic communities through education, should be fully taken into account.”⁹⁴ What recommendations the Commission is specifically referring to remains an unanswered question. Despite the fact that all parties involved in pre-accession monitoring hold regular consultations with external organizations as relevant as the Council of Europe and the OSCE, the Commission is reluctant to give insights on this occasion into what has been recommended on the part of the OSCE and allow the public to see the concrete forms of cooperation and interaction by which Macedonia would enhance its minority protection record in the best way possible in the years to come.

As regards the interaction between key actors in the pre-accession monitoring process, Malinka Ristevska Jordanova, Director of the Institute for European Politics in Skopje, confirms that the European Commission carefully follows the developments in the country through the involvement of the EU Delegation to Macedonia as the central coordinator between Skopje and Brussels.⁹⁵ Ristevska Jordanova underlines that debates on past achievements, ongoing programs and projects as well as future prospects are regularly held throughout a reporting year. The EU Delegation has established a unique triangle of interaction in which all parties enjoy the right to contribute to the monitoring process. These include the government itself, accompanied by diverse governmental agencies with their own measurements and reports, Member State representatives at the ambassadorial level who often exchange opinions on current developments in coordination with the Presidency of the Council of the EU, and an array of nongovernmental organizations, whose observations are regularly solicited and deemed highly valuable as they have considerable expertise in the field being discussed.

94. European Commission, Macedonia 2009 Progress Report, 21.

95. Malinka Ristevska Jordanova, interview by author, Skype interview, April 11, 2012.

As for the field of minority protection, Ristevska Jordanova distinguishes external and domestic players whose activities are pertinent to the pre-accession monitoring process in the country. The former comprises sources of reports by prominent international organizations in the field, of which two were already mentioned, namely the OSCE and the CoE. The interviewee also highlighted that Macedonia has signed and ratified the UN Convention on Civil and Political Rights, so a third very important ‘partner’ in the monitoring process is the United Nations and its Human Rights Bodies, offering expertise and support to the different human rights monitoring mechanisms in the United Nations and implementing their mandate to “monitor State parties’ compliance with their treaty obligations.”⁹⁶

On the other side, domestic contributors to the monitoring process are the government and governmental agencies such as the aforementioned Secretariat for the Implementation of the Ohrid Framework Agreement (SIOFA) and the Agency for the Accomplishment of Rights of the Communities. To compare the records over time, governmental data is compared with reports circulated by nongovernmental entities. Equally important source of information are the opinions of political party leaders and partisan experts who are considered important in shaping the domestic discourse on EU enlargement. Ristevska Jordanova is convinced that the European Commission pays particular attention to what partisan leaders publicly promote as it wants to ensure that neither the political momentum will be lost nor the general consensus broken.⁹⁷

Touching on the fact that there is rarely an opportunity for the public to get familiar with the particularities of the Progress Reports and the monitoring process itself, Ristevska Jordanova assumes that the problem lies in the complexity of the entire process. She maintains that there are not enough ‘messengers’ who would be capable of communicating the process with the masses and

96. United Nations, U.N. Human Rights Bodies, <http://www.ohchr.org/en/hrbodies/Pages/HumanRightsBodies.aspx> (accessed May 20, 2012)

97. Malinka Ristevska Jordanova, interview by author, Skype interview, April 11, 2012.

asserts that this is primarily due to a general lack of knowledge rather than unwillingness to do so. In her opinion, domestic political actors are excessively focused on procedural trivia and issues that need to be addressed in due time as required by Brussels. As a result, the question of formulating a coherent communication strategy is given no priority. On the other hand, she believes that the need to increase and improve the overall understanding of what is presented in the Reports becomes more visible each year—those citizens who are not familiar with the diplomatic vocabulary and ambiguous institutional formulas used by the Commission tend to “have an incomplete and imbalanced picture of the pre-accession monitoring process.”⁹⁸ This is particularly applicable to the non-dominant ethnic communities such as Turks, Serbs, Vlachs, and Roma.

Observing the situation of the non-dominant ethnic communities, the Commission implicitly voices criticism concerning equitable representation, one of the main pillars of the OFA. The Commission states in the 2010 Report that “the representation of the smaller communities, particularly the Turkish and Roma, in the civil service still remains low.”⁹⁹ Moreover, it notes that while “the practice of recruiting high numbers of civil servants from non-majority communities irrespective of the needs of the public administration continued, [...] some of these civil servants failed to meet the selection criteria, while others were not provided with offices or equipment.”¹⁰⁰ Seeing no improvement, the Commission’s criticism of the quality of the civil servant recruitment process becomes even stronger in 2011:

The overall number of civil servants from the non-majority ethnic communities reached 30%, which is broadly in line with the demographic structure. Efforts were made to increase the representation of the smaller communities in the civil service, notably the Roma and the Turkish community. [...] A large number of newly recruited civil servants received salaries, even though they were not assigned any tasks or responsibilities. Representation of the non-majority communities at senior level remains very low.¹⁰¹

98. Ibid.

99. European Commission, Macedonia 2010 Progress Report, 22.

100. Ibid.

101. European Commission, Macedonia 2011 Progress Report, 20.

Notwithstanding the negative tone, the Commission restates at the end of the 2011 Report that representation of the Roma and Turkish community increased, thereby giving no recommendations on how the problem should be tackled apart from a noting that “more efforts are needed in order to improve the quality of the recruitment process.”¹⁰²

A similar formula is used in assessing the situation of the Roma population. The Reports make it clear that in order to comply with the pre-accession requirements, the national authorities need to do everything in their power to improve the Roma’s overall position in Macedonian society. The Commission states in the 2007 Report that Roma “continue to face very difficult living conditions and discrimination, especially in the areas of education, social protection, health care, housing and employment.”¹⁰³ Little progress on Roma inclusion is reported in the following years as well. In the majority of the Reports, it is said that “the pace of implementation of the Roma Strategy and the action plans in the framework of the 2005-2015 Decade of Roma Inclusion, which had reached its halfway point, continued to slow down.”¹⁰⁴ The Commission provides an in-depth analysis taking into account all relevant components of the institutional framework. Its tone is rather mild while cataloguing the main shortcomings: “The commitment and cooperation of the line ministries remained low. State funds remain insufficient in the light of the challenges. No additional staff was allocated to the office of the Roma minister without portfolio or to the unit for implementation of the Roma Strategy.”¹⁰⁵ To encourage improvement, the Commission seems to advocate an inclusive approach to reform within the framework of the Decade of Roma Inclusion but offered only general recommendations of the type of activities without describing any specific steps.

102. Ibid.

103. European Commission, Macedonia 2007 Progress Report, 16.

104. European Commission, Macedonia 2011 Progress Report, 21.

105. European Commission, Macedonia 2010 Progress Report, 22-23.

In view of the preceding findings, the EU's involvement in brokering the Ohrid Framework Agreement as a new pattern of power distribution and social coexistence of all ethnic groups in Macedonia has made the European Commission well familiar with the country's minority protection regime. The OFA is considered to be at the heart of this regime and is steadily referred to as a roadmap to peace and stability in Macedonia. The Commission's Reports in many instances voice implicit criticism toward the catalogued weaknesses but neither does it generate recommendations that would potentially lead to improvement and sustainable reform. By simply communicating that 'the spirit of the OFA needs to be upheld consistently, through a consensual approach and readiness to compromise,'¹⁰⁶ the Commission leaves considerable room for divergent interpretations on the part of the domestic actors, thus complicating the process of obtaining useful feedback from the other end.

106. European Commission, Macedonia 2006 Progress Report, 15.

CHAPTER 3: PRE-ACCESSION MONITORING IN CROATIA AND MACEDONIA IN A COMPARATIVE PERSPECTIVE: DISCUSSION AND RECOMMENDATIONS

The conceptualization and application of the conditionality principle in the field of minority protection as elaborated in the Commission's Progress Reports seems to form a coherent framework aimed at helping the candidate countries "to pursue necessary reforms and eliminate persisting shortfalls."¹⁰⁷ However, the analysis of the Reports on both Croatia and Macedonia allows for the opportunity to highlight three fundamental shortcomings from which the pre-accession monitoring process greatly suffers. In doing so, ample room is left for innovative solutions aimed at ensuring that the monitoring process translates into an opportunity for credible analysis and organizational learning, and for informing decisions to guide pre-accession compliance in the field of minority protection.

3.1 Lack of Clarity and Specification of Minority Protection Standards to Which the Candidate Countries Need to Adhere

Putting both units of analysis in a comparative perspective, the most striking cross-country drawback of the European Commission's approach to pre-accession monitoring is the profound lack of clarity about the minority protection standards to which Croatia and Macedonia need to gradually adhere. No mention of a single standard of minority protection is made in the Progress Reports that could be regarded as a part of the enlargement policy towards the Western Balkans. In consideration of the fact that there are no provisions on minority protection *per se* in the *acquis communautaire*, the Commission is unable to provide any standards on its part. It is more surprising, however, that the Commission does not make any reference to standards in areas of minority

107. Maurer, "Progress of the Negotiations," 122.

protection where the Council of Europe and the OSCE have expertise, although it attaches great importance to the Council of Europe's key documents and to the OSCE High Commissioner's activities on the ground. This shortcoming has urged the Commission to largely base the monitoring procedure on measurements from domestic and external sources without having a clear agenda set and a definition of objectives that would mirror effective minority protection. A question that arises in this respect is whether the Commission refuses to act outside the scope of the *acquis communautaire* and give reference to standards by external organizations only because it is unwilling to give up its central management position in the pre-accession process.

In fact, the limited progress of both candidate countries reflects only what was required from them by the Commission during the monitoring process. Since an ideal minority protection scheme on the basis of the Copenhagen political criteria had not been established before the initiation of the monitoring process, what was outlined in the Progress Reports became a crucial roadmap for the candidate countries during the pre-accession process. For instance, the Commission calls for the respect for and implementation of laws that have already been passed at the national level. As it has been shown previously, the Commission deems the Constitutional Law on the Rights of National Minorities (CLNM) important for Croatia's minority protection in the same way in which it considers the Ohrid Framework Agreement essential for the effective minority protection scheme of Macedonia. To what extent these documents reflect the provisions that spell out the objectives and principles protected by the Framework Convention for the Protection of National Minorities is not clear. Instead, the Commission imposes its own standards generated in the light of the post-Yugoslav potential of threat to Europe's stability stemming from diverse improperly-resolved issues of minority protection in the Western Balkan candidate countries.

This issue is also of concern to Malinka Ristevska Jordanova, the Director of the Institute for European Politics in Skopje. According to her, the Commission's final assessment published in

the Reports is objective and realistic, but she doubts the assessment of targets and indicators that are not always agreed a priori. She maintains that the standards of minority protection are often bargained once the monitoring process has started. *Ergo*, the requirements tend to have a low threshold, making it uncomplicated for the Commission to conclude that the candidate countries have generally met the criteria. Nonetheless, phrases as overused as ‘further progress is needed,’ ‘there is a need for additional efforts,’ ‘the administrative capacity needs to be strengthened,’ or ‘greater dialogue is needed to foster trust’ make it difficult to ascertain when a candidate country has in fact complied with the standards. On the other end of the map, the candidate countries could conveniently interpret such nebulous phrases according to their current political needs and take them as a sign of insufficient preparedness on the part of the Commission to conduct in-depth analysis of the progress made. Consequently, the candidates might not put enough effort to establish adequate policies of minority protection, thereby slowing the momentum towards EU membership.

To prevent the negative impact of such a dubious approach on the credibility of the European Union, the Commission needs to establish stronger institutional ties with the Council of Europe. The assessment of candidate countries in the field of minority protection should make full use of the established expertise of the CoE and employ the standards that have been already enshrined in its key documents, most notably in the FCNM; the Commission’s bureaucrats should increasingly strive to base their judgments on the findings published within the FCNM’s monitoring framework. Furthermore, keeping in mind that the Commission enjoys the greatest agenda-setting power in European governance, it should take the lead in seeking further improvement of the EU’s own expertise on issues related to minority protection but also carefully act not to replicate structures or initiatives already launched under the auspices of the CoE. Such steps will ensure that the Commission keeps both its central position in the pre-accession process and the candidate countries on the right track towards compliance without bringing into question their progress.

3.2 *Inferior Quality of both Analysis and Interpretation of Indicator Findings*

The comparison of the Commission's Reports further demonstrates inferior quality of both analysis and assessment of indicator findings. The Commission's approach to interpreting information to a great extent rests on a random choice of issues, poorly justified conclusions and vague recommendations. Whereas it is desirable to thoroughly reflect on how indicator findings are interpreted and used to inform decisions in order for decision makers to get a firm understanding of the big picture, the Commission's choice of measuring performance does not seem to be backed by a systematic discussion of the issues raising concern. Instead, the Commission shifts the focus from paragraph to paragraph and deals with particularly serious, acute problems, thus demonstrating that it is able to 'see the trees but not the forest.'

Keeping this in mind, the majority of the Reports connect the notion of successful minority protection with statistical data of formal rule adoption provided by other domestic and foreign organizations. The quality and sustainability of initiatives or activities of certain institutions are only occasionally assessed in detail—such cases are prevalent in the Reports on Macedonia: These include the SIOFA and the Agency for the Accomplishment of Rights of the Communities. The rather rare qualitative assessments of institutional frameworks in Croatia are peculiarly superficial: The local minority councils and the umbrella Council for National Minorities are mentioned in the 2005 Report as crucial for raising awareness among the local authorities and minority groups. In the later Reports, the Commission does not deal with the councils' activities any more—it only reports how much funds these bodies have received from the state budget. In light of the aforementioned drawbacks, it becomes clear that by extensively dealing with numeric information at the expense of meaningful feedback, the Commission is only interested in outcomes indicating formal compliance rather than processes, thus casting doubt on the consistency of the overall monitoring process over time. It also allows for the assumption that the Commission does not make full use of the regular

meetings in the candidate country to closely interact with domestic actors—the interviewees from both Croatia and Macedonia confirm that these meetings increasingly become pro forma fora lacking an environment of confidence and trust.

To ensure a degree of rigor and a more substantial discussion of indicator findings, developed indicators need to be interpreted together with qualitative findings. Numbers providing the amount of an output give only limited implications for the result achieved. As indicated in the Performance Measurement Guidance for Compliance and Enforcement Practitioners, “[s]uch numbers need a context [as] in many instances; data from indicators provide a kind of warning light that signals a need for deeper analysis or further investigation to understand the forces and influences that shape [a certain process].”¹⁰⁸ Hence, it is necessary for the Commission to look at the national context as a whole and takes into account the factors which help to facilitate or prevent the adoption of new legal acts on minority protection or the implementation process of programs aiming to increase the integration of minority groups. This will create a firm basis for the improvement of dialogue in a respectful setting between the Commission on one side and governmental agencies and minority groups on the other.

3.3 Inconsistencies among and Unequal Treatment of Candidate Countries over Time based on an *ad hoc* Assessment

The lack of official standards and clarity in the assessment of indicator findings leaves ample room for ambiguous maneuvers on the part of the Commission in the course of the monitoring process, thereby permitting the unequal treatment of the candidates based on *ad hoc* requirements imposed according to the context of each country’s assessment. The issues that are identified as subjects of

108. International Network for Environmental Compliance and Enforcement, *Performance Measurement Guidance for Compliance and Enforcement Practitioners*, (April 2008), 21-22. <http://www.inece.org/indicators/guidance.pdf> (accessed May 29, 2012)

monitoring in the Progress Reports on Croatia and Macedonia do not reflect universal application of the conditionality principle.

At no point of the reporting period has the Commission revealed the rationale behind its behavior of why it does not report on events marked by intolerance or violence in Croatia while making mention of a handful of events with a careful attention to detail in the case of Macedonia. There is no explanation provided as to why something is included or excluded from the monitoring process. Surprisingly, the Commission repeatedly demands from Croatian police to consistently pursue their investigations and initiate prosecution for those involved in the incidents. In the case of Macedonia, such incidents are described as particularly concerning but no pressure is made on the police to conduct investigations and eliminate any adverse effects of the events on the local community. These events have important implications for the direction in which the overall situation develops, but the Commission is reluctant to equally pay attention to such incidents.

A similar observation can be made of the level of criticism expressed in both cases. Although a critical analysis is never provided in the true sense, the Commission admonishes Macedonian authorities on much more occasions than Croatian. By means of illustration, the Commission implicitly criticizes the work of Macedonian institutions to protect minority groups in that it states, for instance, that many cases of discrimination remain unreported because of lack of confidence in the authorities. The analysis of the content has not identified such negative assessments of Croatian police or other institutions relevant to minority protection. Furthermore, the Commission often poorly acknowledges local Macedonian institutions to have credibly responded to the challenges brought by the new pattern of decentralization. Rather, it seems overly concerned with details, thus finding a number of reasons against which it can voice criticism: “effectiveness continues to be limited by poor operational capacity, unclear competences and weak status, [...] the committees are not functional and their composition does not reflect the ethnic

structure of the local population, etc.”¹⁰⁹ In contrast, the assessment of minority protection at the municipal level in Croatia takes form of a formal checklist, without providing a deep insight into the function of the local minority councils—it is only stated whether these have been set up or not.

In an even more complex manner, the progress of the candidate countries is not measured over a consistent time frame. Macedonia is also in this respect put in a negative light. Although nearly each paragraph starts with a reference to the extent to which progress has been made in comparison to the year before, the analysis could not identify clear time frames against which progress is measured. Although the Commission in many instances refers to the signature of the Ohrid Framework Agreement as a milestone in the history of Macedonian politics, it is utterly confusing whether developments are observed from the signature onwards, or starting from 2006, when the first Report was published. As regards the SIOFA, a crucial mistake is committed in the 2010 Report: The Commission states that “nine years after the signature of the [OFA], the SIOFA has not so far produced a report on its activities and the progress achieved in implementing the OFA,”¹¹⁰ completely disregarding the fact that the institution started functioning as late as 2004.

In consideration of the negative impact of the Commission’s unequal treatment of the candidate countries in monitoring compliance in the area of minority protection, it is essential for the future of enlargement that a uniform framework of EU conditionality is intentionally designed as part of the founding Treaty on the EU. Bearing in mind Dimitry Kochenov’s categorical assertion that “conditionality can then only become a true principle of enlargement, when the whole accession process is mostly moved away from the sphere of politics into the realm of law,”¹¹¹ a revision of the Treaty’s provisions on enlargement will give the Commission a strong legal integrity to pursue a well-elaborated rationale for conducting pre-accession monitoring in the field of minority

109. European Commission, Macedonia 2010 Progress Report, 21.

110. Ibid.

111. Kochenov, *EU Enlargement and the Failure of Conditionality: Pre-Accession Conditionality in the Fields of Democracy and the Rule of Law*, 312.

protection. Such a far-reaching step would include a general reassessment of the conditionality instruments in the primary EU law, introducing clearer membership criteria stemming from the Council of Europe's key documents and appropriate assessment benchmarks adjusted to the domestic context of the candidate country.

Ad interim, as such a step is highly unlikely to be made in the near future due to the sui generis nature of the European legal order, the Commission's credibility in the pre-accession process should be reestablished through gaining new skills and building new capacities. This does not imply acquiring new responsibilities but rather playing a role committed to establishing organizational networks and developing management capacities to credibly maintain them. A stepping stone to such an enhanced capacity would be the recruitment of experienced experts in the Delegations of the European Union to the candidate countries who would employ stronger and more transparent means of communication during the monitoring process with all relevant actors on the ground. In this sense, the Commission's bureaucrats need to look beyond Brussels' politically complex setting and hear more carefully the voice of domestic players in the candidate countries who have strong interest in accelerating the progress towards compliance in the field of minority protection.

CONCLUSION

The academic debate on conditionality as a principle of enlargement has heralded pre-accession monitoring as a key mechanism of compliance with EU standards. Nevertheless, the academic camp has not provided an insight into how monitoring contributes to the failure or success of enlargement and in what ways it should be carried out. It is in view of this shortcoming that this research project endeavored to contribute to the literature on use by focusing on monitoring as a “continuing function that aims to provide [decision makers] and main stakeholders of an ongoing process with early indications of progress, or lack thereof, in the achievement of results.” Facing the next enlargement round to the region of the Western Balkans, this thesis investigated in detail how progress made by the Western Balkan candidate countries is monitored in the area of minority protection.

For this study, two questions were of particular importance: What standards of EU conditionality mirror effective minority protection in Western Balkan candidate countries and what role does monitoring play in defining those standards? How does the EU monitor and enforce compliance of Western Balkan candidate countries with standards of minority protection and how do the EU and the candidate countries interact in the overall monitoring process? Combining conventional QCA and semi-structured interviews, this research project tested the hypothesis that monitoring in the field of minority protection is not directly tied to accession as the final outcome of the pre-accession process. By comparing the European Commission’s approach to monitoring in the field of minority protection in Croatia and Macedonia, the thesis demonstrated that in the absence of a clear monitoring framework, monitoring activities on the part of the EU are largely brought into play on an *ad hoc* basis, thereby making accession a product of political compromise.

Three crucial drawbacks could be identified. Firstly, there was a profound lack of clarity and specification of minority protection standards to which candidate countries in the Western Balkans

needed to adhere. Considering that there are no minority protection provisions in the *acquis communautaire*, the Commission could not provide any standards on its part, so the progress of the candidates was largely constructed. Even more surprisingly, the Commission did not refer to any standards in areas of minority protection where the Council of Europe and the OSCE have expertise, although it attaches great importance to the Council of Europe's key documents and to the OSCE High Commissioner on National Minorities.

Secondly, inferior quality of both analysis and interpretation of indicator findings based on a random choice of issues, poorly justified conclusions, and vague recommendations was detected. By extensively dealing with numeric information at the expense of meaningful feedback, the Commission was only interested in outcomes indicating formal compliance rather than processes. This also indicates that the Commission has not used the regular meetings in the candidate countries to closely interact with domestic actors so that it could get a firm understanding of the big picture of the countries' situation. The recommendations given did not allow a general action plan to be recognized—it was neither indicated what could have helped to maintain progress, nor were suggestions given as to how compliance should be furthered.

Thirdly, and most strikingly, there was a stark unequal treatment of the candidate countries over time, casting doubt on the overall application of both conditionality and monitoring during the pre-accession process. The aspects monitored in the Progress Reports on Croatia and Macedonia did not reflect universal application of the conditionality principle; this was evident on the fact that there was no explanation provided as to why something was included or excluded from the monitoring process. Phrases such as “some progress has been achieved” made it difficult to ascertain when either country complied with the standards. Furthermore, although a critical analysis was never provided in the true sense, the Commission admonished Macedonian authorities on more occasions than Croatian, or it often poorly acknowledged local Macedonian institutions while the

criticism toward Croatia was mild when the country seemed non-performing. Not least, the analysis could not identify clear time frames against which progress was measured.

Taking into account this evidence, it can be concluded that both countries maintain a mediocre-level progress as regards minority protection. In fact, the limited progress of both candidate countries reflects only what was required from them by the Commission during the monitoring process. What is striking is that the Commission neither encouraged progress by favorably assessing the fulfillment of conditions to encourage progress, nor it sanctioned the candidates when they were non-compliant. In this sense, the fact that Macedonia is still not given the possibility to open the negotiation talks—which Croatia already closed—clearly shows that pre-accession monitoring has no strong ties to the eventual accession of the country into the EU. The Commission opted not to employ monitoring as a mechanism of upholding compliance; the rationale behind the decisions on who of the candidates will be granted membership would have to be sought elsewhere in the labyrinth of European institutions.

In the light of these concerns, if compliance is intended to be not only upheld but also furthered over time, the Commission should endeavor to establish a consistent monitoring framework that will look beyond formal compliance and pay closer attention to the processes taking place at all levels in the candidate country during a reporting year. Full use should be made of the Council of Europe's expertise and standards that have been already enshrined in its key documents, most notably in the FCNM. To ensure a more substantial discussion of indicator findings, developed indicators need to be interpreted in connection with qualitative findings because numbers indicating the amount of an output give only limited implications for the result achieved. Finally, a revision of the enlargement provisions in the Treaty on the EU would give the Commission a strong legal integrity and reduce the room for maneuver in conducting pre-accession monitoring in the field of minority protection.

APPENDIX

Concluding Paragraphs of the Sections on ‘Minority Rights, Cultural Rights and the Protection of Minorities’ in the European Commission’s annual Progress Reports on the Republic of Croatia and the Republic of Macedonia¹¹²

	CROATIA	MACEDONIA
2005	<p>Despite some positive initial steps since the Opinion to improve the Roma’s disadvantaged position, <u>serious difficulties remain</u>, not least in the area of education and employment where discrimination is widespread and the problem of segregation in schools remains. There also seems to be a lack of institutional structures within the relevant ministries, and an unwillingness or inability of some local authorities to finance Roma programs. Relations between the Croatian State and the Serb minority are burdened by the legacy of the 1991-95 war, in particular the question of refugee return and the restitution of these refugees’ property.</p>	<p><i>(No Progress Report issued for this year)</i></p>
2006	<p>Implementation of the Constitutional Law on National Minorities (CLNM) <u>continues to be slow</u> and problems persist particularly in terms of under-representation of minorities in state administration, the judiciary and the police. In relation to the Serb minority, there have been mixed developments. Generally, the mood in the country appears to continue to move forward, albeit slowly. Funding is still not adequate for addressing the challenges of the action plan if real improvements in the Roma’s position are to be achieved. Most Roma remain excluded from mainstream Croatian society. Discrimination of Roma in Croatia continues, whether in terms of access to employment, in schooling, or in general attitudes in society.</p>	<p>Overall, <u>there were no major problems</u> in the area of fundamental rights. The level of minority rights’ protection has remained high. However, there are still a number of areas where implementation of the fundamental rights should be fostered. The implementation of the Ohrid Framework Agreement is essential to foster a positive environment for further reforms.</p>

112. All paragraphs quoted from the European Commission’s Progress Reports; emphasis added by the author.

2007	<p>Overall, the position of minorities in Croatia <u>continues to improve slowly</u>. Legal provisions for protection of minority rights are in general adequate, but a number of important challenges remain in terms of implementation, especially as regards employment. Croatia also needs to encourage a spirit of tolerance towards the Serb and Roma minorities in particular and take appropriate measures to protect persons belonging to these minorities who may be subject to threats or acts of discrimination, hostility or violence. Progress on important outstanding refugee return issues has been limited. A more comprehensive policy addressing disadvantage and social exclusion is necessary.</p>	<p>Overall, <u>inter-ethnic relations have improved</u>. However, the spirit of the Ohrid Framework Agreement needs to be upheld consistently, through a consensual approach and readiness to compromise. There has been only limited progress on the situation of the Roma, which continue to face very difficult living conditions and discrimination, especially in the areas of education, social protection, health care, housing and employment.</p>
2008	<p><u>Some progress has been made</u> with regard to the implementation of the Constitutional Law on National Minorities (CLNM). However, implementation of the CLNM's provisions in practice presents a mixed picture. Some provisions are implemented well, others only to a limited extent. Overall, the position of minorities in Croatia continues to improve. However, many problems remain for the Serb and Roma minority. Some progress on outstanding refugee return issues was made but efforts to ensure sustainability of refugee return need to be accelerated.</p>	<p>Overall, <u>there has been some progress</u> with regard to cultural rights and minority rights. A law on languages was adopted and there has been some progress on equitable representation. Nonetheless, effective implementation of the Ohrid Framework Agreement needs to move forward, through a consensual approach and a spirit of compromise. More efforts are needed to address the concerns of the smaller ethnic minorities. Little progress can be reported regarding the Roma. They continue to face very difficult living conditions and discrimination, with poor access to education, social protection, healthcare, housing and employment. Nonetheless, overall the country is moderately advanced in this area.</p>

2009	<p><u>There has been some progress</u> in the area of minority rights, cultural rights and protection of minorities. Overall, the position of minorities in Croatia continues to improve. However, many problems remain for the Serb and Roma minorities. Some progress on outstanding refugee return issues was made but efforts to provide housing solutions and ensure sustainability of refugee return need to be accelerated.</p>	<p>Overall, <u>there has been some progress</u> with cultural rights and minority rights. There has been some progress on equitable representation and the government undertook initial steps to address the issue of implementation of the law on languages and to foster inter-ethnic integration in the education system. Nonetheless, integration of ethnic communities remains limited. Effective implementation of the Ohrid Framework Agreement needs to be maintained, in a spirit of consensus. The concerns of the smaller ethnic communities should be more thoroughly addressed. Little progress can be reported regarding the Roma. They continue to face very difficult living conditions and discrimination, particularly regarding access to personal documents, education, social protection, healthcare, employment and adequate housing.</p>
2010	<p><u>There has been some progress</u> with respect for and protection of minorities, cultural rights. Overall, the position of minorities in Croatia is continuing to improve. However, many problems remain for the Serb and Roma minorities. Some progress was made on outstanding refugee return issues, but efforts to provide housing and ensure the sustainability of returns need to be accelerated.</p>	<p><u>Progress was achieved</u> in the area of cultural rights and minorities. There has been some progress on equitable representation and the government undertook initial steps to foster interethnic integration in the education system. Nonetheless, integration of ethnic communities remains limited and greater dialogue is needed to foster trust especially in the areas of culture and language. Some progress can be reported regarding the rights of Roma. The number of persons lacking personal documents was reduced. However, Roma continue to face very difficult living conditions and discrimination.</p>
2011	<p><u>There has been progress</u> as regards the protection of minorities and cultural rights. The commitment to the rights of minorities, reaffirming their place in Croatian society, continues to be expressed at the highest level. Overall, the position of minorities in Croatia is continuing to improve, although problems remain for the Serb and Roma minorities. Good progress was made on outstanding refugee return issues, but the efforts to provide housing and ensure the sustainability of returns need to continue.</p>	<p>Overall, <u>some progress was achieved</u> as regards the respect for and protection of minorities and cultural rights. The Ohrid Framework Agreement continues to be an essential element for democracy and rule of law. In parliament, implementation of the Law on Languages moved forward. Representation of the Roma and Turkish community in the civil service increased. The integration of the Roma in the education system improved, with increased enrolment in secondary and university education. Continued dialogue amongst all the communities is necessary in order to foster trust, especially in the areas of education, culture and language. Roma continue to face very difficult living conditions and discrimination and additional efforts are necessary.</p>

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